

No. 11115

United States
Circuit Court of Appeals
For the Ninth Circuit.

AMERICAN BOX SHOOK EXPORT
ASSOCIATION, a Corporation,
Petitioner,
vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Transcript of the Record

Upon Petition to Review a Decision of the Tax Court
of the United States

FILED

OCT 3 - 1945

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Exhibit for Respondent:

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- Hudson, C. D.
 —direct 36
 —cross 63
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- O'Brien, J. F.
 —direct 95
- Rodgers, J. W.
 —direct 102

APPEARANCES

For Taxpayer:

FRANK L. MUNCY,
W. R. WALLACE, Jr.

For Commissioner:

ARTHUR L. MURRAY, Esq.

Docket No. 777

AMERICAN BOX SHOOK EXPORT
ASSOCIATION,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DOCKET ENTRIES

1943

Feb. 17—Petition received and filed. Taxpayer notified. Fee paid.

Feb. 17—Copy of petition served on General Counsel.

Mar. 17—Answer filed by General Counsel.

Mar. 17—Request for hearing at San Francisco filed by General Counsel.

Mar. 19—Notice issued placing proceeding on San Francisco, Calif., calendar. Service of answer and request made.

1943 Docket Entries—(Continued)

- Oct. 14—Hearing set Nov. 22, 1943—San Francisco, Calif.
- Nov. 22—Hearing had before Judge Arundell. Petitioner's counsel moves to continue to next San Francisco calendar. Motion granted. Motion filed. Appearance filed—W. R. Wallace, Jr.

1944

- Aug. 10—Hearing set Sept. 18, 1944—San Francisco, Calif.
- Sept. 20—Hearing before Judge Van Fossan on merits. Submitted. Briefs due Nov. 4, 1944. Replies 12/4/44.
- Oct. 14—Transcript of hearing 9/20/44 filed.
- Nov. 1—Brief filed by taxpayer. 11/6/44 Copy served.
- Nov. 4—Brief filed by General Counsel. Served 11/6/44.
- Dec. 1—Reply brief filed by taxpayer. 12/1/44 Copy served.

1945

- Feb. 12—Findings of fact and opinion rendered, Van Fossan, J. Decision will be entered under Rule 50. Copy served.
- Mar. 3—Computation of deficiency filed by General Counsel.
- Mar. 10—Hearing set 4/11/45 on settlement.
- Apr. 9—Consent to settlement filed by taxpayer.
- Apr. 11—Decision entered, Van Fossan, J., Div. 9.
- July 5—Bond in the sum of \$6,444.94 approved and ordered filed.

1945 Docket Entries—(Continued)

July 5—Petition for review by U. S. Circuit Court of Appeals, Ninth Circuit, filed by taxpayer, with proof of service thereon.

July 5—Designation of record filed by taxpayer with proof of service thereon.

July 5—Affidavit of service by mail of petition for review and designation of record filed.

[1*]

The Tax Court of the United States

Docket No. 777

AMERICAN BOX SHOOK EXPORT
ASSOCIATION,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency IRA :90-D-HOB dated December 9, 1942, and as a basis of his proceeding alleges as follows:

1. The petitioner is a corporation organized and existing under the laws of the State of California. The principal office of the corporation is at One Montgomery Street, San Francisco, California. The

*Page numbering appearing at top of page of original certified Transcript of Record.

returns for the period here involved were filed with the collector for the first district of California.

2. The notice of deficiency (a copy of which is attached and marked exhibit A) was mailed to the petitioner on December 9, 1942.

3. The taxes in controversy are income and excess profits taxes for the fiscal year ended May 31, 1941 in the total amount of \$3,222.47.

4. The determination of tax set forth in the said notice of deficiency is based upon the following errors:

(a) The Commissioner of Internal Revenue hereinafter referred to as the "respondent" erred in determining a deficiency in the petitioner's income tax for the fiscal year ended May 31, 1941 in the amount of \$2,952.15 or in any other or lesser amount. [2]

(b) The respondent erred in determining a deficiency in the petitioner's excess profits tax for the fiscal year ended May 31, 1941 in the amount of \$1,270.32 or in any other or lesser amount.

(c) The respondent erred, when, in referring to certain payments made to member mills as additional realization on sales of shook shipped, he stated " * * * distributions * * * constitute a dividend paid out of the profits of the corporation and is not deductible".

(d) The respondent erred when he stated, concerning the payments to member mills of additional realization that " * * * No binding obligation to make such payments was in existence before the profits were earned".

(e) The respondent erred in disallowing a reserve for claims against defective shook in the amount of \$4,000.00

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

(a) The petition was organized as a non-profit association for the purpose of conducting export trade at cost in behalf of its members. The association was availed of to handle the foreign trade of the respective members, chiefly to simplify the preparation of export documents and to eliminate the necessity of individual members keeping in touch with foreign exchange fluctuations, and similar details of export trade. Further, it has been the policy of the association to settle with its members on the basis of a preliminary billing price for shook furnished, with the definite understanding that any excess received from the sale of shook over expenses would be subject to distribution as additional realization on shipments made during the period when such excess was accumulated. This intention is specifically expressed in the minutes of meeting held July 29, 1940. [3]

The exporting of box shook to customers in South Africa and European ports naturally would prolong the accounting upon any such shipment. Due to the disturbed world market the petitioner has been unable to function as smoothly with its long range customers, particularly where claims or allowances are involved. The Association intended from its inception to operate on a non-profit basis. By dealing with its member mills on a preliminary

billing basis, the Association management was able to operate without assessing the member mills. Had the Association paid out immediately to the member mills the exact amount of the expected realization on each cargo shipment, there would have been no funds to provide for claims, allowances, losses or any other contingencies, other than by assessing the member mills as the need arose. The petitioner recognizes the necessity of some working capital and was content to pay tax on a limited amount of undistributed additional realization as was manifest by the tax assessed by the original returns filed. The petitioner maintains that its transactions with its respective members has been at arms length and that it has the right to adjust the preliminary billing price when the final realization is determined on each cargo shipment within the taxable year. The assertion of this right is in harmony with the practice existing in normal business transactions between buyer and seller.

In the case of the Midland Cooperative Wholesale 44 BTA 824, the opinion states:

“* * * The Treasury department, however, as pointed out in *Fruit Growers Supply Co.*, 21 BTA 315, 326; *affd.*, 56 Fed. (2d) 90, with ‘great liberality’ has allowed such deductions ‘to the end that substantial justice may be done to an association which is engaged in cooperative marketing or purchasing work but which may not be exempt from taxation’. The justification for the ruling rests upon the fact that the so-called dividends are in reality rebates upon the business transacted by the

association with its members rather than true income to the association * * *” [4]

(b) The reserve for claims against possible loss on mouldy or defective shooK, overcharges, re-bundling, freight adjustments, etc., has been disallowed by the respondent on that grounds that the amount was indefinite, unsettled, and lacking in proof. Petitioner has paid or allowed, subsequent to the close of fiscal year ended May 31, 1941, \$1,329.68 applying against a portion of the anticipated loss claim. Certain items are yet to be fully determined and petitioner contends that the original reserve is a fair estimate of the liability which will ultimately be paid or allowed to the customers.

Wherefore, the petitioner prays that this Court may hear the proceeding and

(a) Determine that there is no deficiency in the petitioner’s income tax for the fiscal year ended May 31, 1941;

(b) Determine that there is no deficiency in the petitioner’s excess profits tax for the fiscal year ended May 31, 1941.

(Sgd.)

FRANK L. MUNCY,

Counsel for the Petitioner.

State of California,

County of San Francisco—ss.

Ward A. Dwight, being duly sworn, says that he is President of American Box ShooK Export Association, the petitioner above named and as such officer is authorized to verify the foregoing petition, that he has read the foregoing petition and is familiar

with the statements contained therein and that the statements contained therein are true.

(Sgd.) WARD A. DWIGHT

Subscribed and sworn to before me this 11th day of February, 1943.

(Sgd.) LEONTINE E. DENSON,
Notary Public for California

My commission expires August 12, 1943. [5]

EXHIBIT A

Form 1232

SN-IT-3

Office of

Internal Revenue Agent in Charge

San Francisco Division

IRA:90-D-HOB

(C:TS:PD

SF:WGW)

Treasury Department
Internal Revenue Service
74 New Montgomery Street
San Francisco, California

December 9, 1942

American Box Shook Export Association

407 Crocker Building

San Francisco, California

Gentlemen:

You are advised that the determination of your income tax liability for the taxable year ended May 31, 1941 discloses a deficiency of \$1,952.15 and that the determination of your excess-profits tax liability for the year mentioned discloses a deficiency of \$1,270.32 as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiencies mentioned.

Within 90 days (not counting Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United States for a redetermination of the deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, San Francisco, California, for the attention of Conference Section. The signing and filing of this form will expedite the closing of your return by permitting an early assessment of the deficiencies and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,

GUY T. HELVERING

Commissioner,

(Signed) By F. M. HARLESS

Internal Revenue Agent in
Charge.

Enclosures:

Statement

Form of waiver.

(In. RR) [6]

STATEMENT

San Francisco
 IRA :90-D
 HOB
 (C:TS:PD
 SF:WGW)

American Box Shook Export Association,
 407 Crocker Building,
 San Francisco, California.

Tax Liability for the Taxable Year Ended May 31, 1941

	Liability	Assessed	Deficiency
Income Tax	\$4,067.07	\$2,114.92	\$1,952.15
Excess profits tax	2,566.78	1,296.46	1,270.32

In making this determination of your income and excess profits tax liability, careful consideration has been given to your protest dated May 30, 1942 and to the statements made at the conferences held on July 15, 1942, October 6, 1942, and October 8, 1942.

A copy of this letter and statement has been mailed to your representatives, Mr. Frank L. Muney, 1 Montgomery Street, San Francisco, California, in accordance with the authority contained in the power of attorney executed by you and on file in this office.

ADJUSTMENTS TO NORMAL TAX NET INCOME

Net income as disclosed by return		\$13,317.66	
Unallowable deductions and additional income:			
(a) Distribution to stockholders.....	\$ 7,559.11		
(b) Incorporation expense	335.71		
(c) Accounting fee	150.00		
(d) Reserve for claims	4,000.00	12,044.82	
Total.....			\$25,362.48
Nontaxable income and additional deductions:			
(e) Franchise tax	\$ 159.30		
(f) Capital stock tax	660.00	819.30	
Net income adjusted			\$24,543.18

EXPLANATION OF ADJUSTMENTS

(a) On or about May 31, 1941 you distributed, out of your net income, amounts aggregating \$7,559.11 to certain lumber mills, that were stockholders, or that had subscribed to your stock. You claimed the above-mentioned amount as a deduction. The distribution was based upon the board feet of box shook shipped by each mill. No binding obligation to make such payments was in existence before the profits were earned. It is held that the above-named amount constituted a dividend paid out of the profits of the corporation and is not deductible.

(b) Incorporation expense of \$335.71 claimed as a deduction in your return is disallowed as not being an ordinary and necessary business expense.

(c) An accounting fee of \$150.00 claimed as a deduction in your return, representing expense incurred by American Box Shook Export Association (unincorporated), another taxpayer, is disallowed as not being an expense deductible by you since it was the expense of another taxpayer.

(d) On your income tax return you claimed a deduction of \$4,000.00 for an alleged loss respecting box shook shipped by you to a foreign port, on the alleged grounds that the customer contended that said shook was mouldy. No part of the above-mentioned amount has been paid, nor has proof been submitted that you have allowed the claimant any part of said amount. On the basis of the information available it is held that the amount is not deductible.

(e) State Franchise tax of \$159.30 accrued for the taxable year ended May 31, 1941, is allowed as a deduction in your return.

(f) Capital stock tax of \$660.00 accrued for the taxable year ended May 31, 1941, is allowed as a deduction in your return.

COMPUTATION OF TAX

Declared Value Excess-Profits Tax:

Net income for declared value excess-profits tax computation	\$24,543.18
Less: 10 per cent of \$350,000.00, value of capital stock as declared in your capital stock tax return for the year ended June 30, 1940.....	35,000.00

Balance subject to declared value excess-profits tax....	None
Declared value excess-profits tax assessable.....	None
Declared value excess-profits tax assessed.....	None

Income Tax:

Net income for declared value excess-profits tax computation	\$24,543.18
Less: Declared value excess-profits tax.....	None

Normal tax net income	\$24,543.18
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Portion (not in excess of \$5,000. taxable at 13.5%)	\$15,000.00 at 13.5%	\$ 675.00
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Portion (not in excess of \$20,000. taxable at 15%)	\$15,000.00 at 15%	2,250.00
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Portion (in excess of \$20,000. taxable at 17%)	\$ 4,543.18 at 17%	772.34
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Total income tax	\$ 3,697.34
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Income defense tax (10% of \$3,697.34).....	369.73
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Total income and income defense taxes assessable.....	\$ 4,067.07
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Income tax assessed:

Original, account Aug. 1941 No. 410041—First California District	2,114.92
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Deficiency of income tax	\$ 1,952.15
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ADJUSTMENTS TO EXCESS-PROFITS NET INCOME
COMPUTATION EXCESS-PROFITS CREDIT BASED
ON NET INCOME

Excess-profits net income computed under income credit method, as disclosed by return.....	\$11,202.74
--	-------------

Increase:

(a) Net increase in normal tax net income	\$11,225.52
--	-------------

Decrease:

(b) Additional income tax	1,952.15
---------------------------------	----------

Net increase	9,273.37
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Excess-profits net income computed under income credit method, as adjusted	\$20,476.11
--	-------------

EXPLANATION OF ADJUSTMENTS

(a) The net increase in normal tax net income is explained in the foregoing.

Total increases	\$12,044.82
Total decreases	819.30
	<hr/>
Net increase	\$11,225.52

(b) Additional deduction of \$1,952.15 is allowed for additional income tax as computed in the foregoing.

ADJUSTMENT TO EXCESS-PROFITS CREDIT—
BASED ON INCOME

	Year Ended 5-31-37	Year Ended 5-31-38	Year Ended 5-31-39	Year Ended 5-31-40
Excess-profits net income as reported on the return	\$ 0.00	\$ 108.53	\$(6,242.44)	\$ 2,682.25
Increase: (a)	1,089.32	1,244.08	None	13,328.85
Total	\$1,089.32	\$1,352.61	\$(6,242.44)	\$16,011.10
Decrease: (b) Income Tax	163.40	202.89	None	1,870.67
	<hr/>	<hr/>	<hr/>	<hr/>
Excess-profits net income as adjusted	\$ 925.92	\$1,149.72	\$(6,242.44)	\$14,140.43
Net aggregate of above (excluding 1939 deficit).....				\$16,216.07
	<hr/>	<hr/>	<hr/>	<hr/>
Average base period net income—general average for 4 years (1/4 of \$16,216.07)				\$ 4,054.02
(c) Average base period net income—				
Increased earnings in last half of base period.....				\$ 5,404.59
95% of average base period net income				
(95% of \$5,404.59)				\$ 5,134.36
(d) Net capital addition				\$1,008.29
	<hr/>	<hr/>	<hr/>	<hr/>
(e) Net capital reduction				\$ 100.19
	<hr/>	<hr/>	<hr/>	<hr/>
8% of net capital addition				\$ 80.66
6% of net capital reduction.....				6.01
	<hr/>	<hr/>	<hr/>	<hr/>
Net addition				74.65
	<hr/>	<hr/>	<hr/>	<hr/>
Excess-profits credit—based on income.....				\$ 5,209.01

EXPLANATION OF ADJUSTMENTS

(a) It is noted that you were organized on March 26, 1940 and on June 1, 1940 you took over the business of a predecessor association which had operated in an unincorporated status. Under the provisions of section 740 (d) (1) of the Internal Revenue Code, as an acquiring corporation your base period is the forty-eight months preceding the beginning of your taxable year ending May 31, 1941.

In determining the base period income, allocation is made of the net income of the predecessor association for the calendar year to a fiscal year to conform with your fiscal year ending May 31.

Year ended May 31, 1937

Net income:

7/12 of \$344.04 (1936 net income).....	\$ 200.69
5/12 of \$2,132.71 (1937 net income).....	888.63

Total net income	\$1,089.32
Amount reported	None

Increase	\$1,089.32
----------------	------------

Year ended May 31, 1938

Increase:

7/12 of \$2,132.71 (1937 net income).....	\$ 1,244.08
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Year ended May 31, 1939

Net income (Loss) as reported	\$(6,242.44)
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No change recommended.

Year ended May 31, 1940

Net income (Loss)	\$(3,712.13)
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Net increase in taxable net income.....	13,328.87
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Net income as adjusted	\$ 9,616.74
------------------------------	-------------

Add: 1939 net operating loss included in above in- come now eliminated	15,346.47
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Actual net income for period January 1, 1940 to

May 31, 1940	\$24,963.21
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Deduct: 1939 net operating loss prorated—

7/12 of \$15,346.47	8,952.11
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Net income as adjusted	\$16,011.10
------------------------------	-------------

Income reported	2,682.25
-----------------------	----------

Increase	\$13,328.85
----------------	-------------

(b) Deduction for income taxes for the base period years is computed in accordance with section 30.742-1(b)(5) regulations 103, as though the unincorporated association were a corporation.

(c) The amount of increased earnings in the last half of the base period is computed as follows:

Deficit May 31, 1930	\$ (6,242.44)	
Earnings May 31, 1940	14,140.43	
	<hr/>	
Net aggregate of last half of base period		\$ 7,897.99
Earnings May 31, 1937	\$ 925.92	
Earnings May 31, 1938	1,149.72	
	<hr/>	
Net aggregate of first half of base period		2,075.64
Net increase		<u>\$ 5,822.35</u>
Average (\$5,822.35 divided by 2).....		\$ 2,911.18
Net aggregate of last half.....		7,897.99
Total		<u>\$10,809.17</u>

Above amount divided by number of months in second half of base period multiplied by 12
 (\$10,809.17)

 time 12\$ 5,404.59
 (24)

(d) Under the provisions of section 743(b)(1) of the Internal Revenue Code contributions of capital made prior to the acquisition of the component corporation are disregarded in computing the net capital addition of such component corporation.

The net capital addition is computed on the basis of cash contributed in payment of capital stock as follows:

6-24-40	\$ 345.00 at 341/365	\$ 322.32
9-18-40	155.00 at 255/365	108.29
9-24-40	310.00 at 249/365	211.48
10-11-40	155.00 at 232/365	98.25
12-31-40	155.00 at 151/365	64.12
1-31-41	620.00 at 120/365	203.83
	<hr/>	
	\$1,740.00	<u>\$1,008.29</u>
		<hr/>
Net capital additions		<u>\$1,008.29</u>

(e) The net capital reduction allowable to you as an acquiring corporation is based upon the refund of capital investments, as follows:

2-14-41—1 membership of \$345.00—	
(106/365 times \$345.00)	\$ 100.19
	<hr/>

The cancellation of subscriptions on May 28, 1941 is not restored to capital stock account since the amount was not refunded until June 30, 1941 which is not within the taxable year ended May 31, 1941.

COMPUTATION OF EXCESS-PROFITS TAX

Excess profits net income	\$20,476.11
Less:	
Specific exemption	\$5,000.00
Excess-profits credit	5,209.01
	<hr/>
Adjusted excess profits net income.....	\$10,267.10
	<hr/>
Portion not in excess of \$20,000. taxable at 25%	
\$10,267.10 Tax at 25%.....	\$ 2,566.78
	<hr/>
Correct excess-profits tax liability	\$ 2,566.78
Excess-profits tax assessed:	
Original, Aug. 1941, Account No. 400007	
First California District	1,296.46
	<hr/>
Deficiency in excess-profits tax	\$ 1,270.32
	<hr/>

[Endorsed]: T.A.U.S. Filed Feb. 17, 1943.

[Title of Tax Court and Cause.]

ANSWER

Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal

Revenue, and for answer to the petition filed by the above-named petitioner, admits and denies as follows:

1. Admits the allegations contained in paragraph 1 of the petition.

2. Admits the allegations contained in paragraph 2 of the petition.

3. Admits the allegations contained in paragraph 3 of the petition.

4. (a) to (e), inclusive. Denies that the determination of tax set forth in the notice of deficiency is based upon errors as alleged in paragraph 4 and subparagraphs (a) to (e), inclusive, thereunder, of the petition.

5. (a) For lack of information and belief denies all material allegations contained in subparagraph (a) of paragraph 5 of the petition. [14]

(b) For lack of information and belief denies all material allegations contained in subparagraph (b) of paragraph 5 of the petition.

6. Denies generally and specifically each and every allegation in the petition not hereinbefore admitted, qualified, or denied.

Wherefore, it is prayed that the Commissioner's determination be approved and the petitioner's appeal denied.

(Signed)

J. P. WENCHEL TMM

Chief Counsel, Bureau of Internal Revenue.

Of Counsel:

ALVA C. BAIRD,
 Division Counsel.
 ARTHUR L. MURRAY
 T. M. MATHER,
 Special Attorneys,
 Bureau of Internal Revenue.

[Endorsed]: T.C.U.S. Filed Mar. 17, 1943. [15]

[Title of Tax Court and Cause.]

4 T. C. No. 90

Docket No. 777

Promulgated February 12, 1945

The petitioner was organized under the general corporation laws of California. Neither its articles of incorporation nor its by-laws nor any contract required that amounts received in excess of cost be distributed to its members on a patronage basis. No amounts were distributable except upon action by the board of directors. Held, (1) petitioner is not a true cooperative and is subject to tax upon its income; (2) petitioner is not entitled to a deduction for amounts actually distributed during the year.

W. R. Wallace, Jr., Esq., and Frank L. Muncy, C.P.A., for the petitioner

Arthur L Murray, Esq., for the respondent

The respondent determined deficiencies in income and excess-profits taxes against American Box Shook Export Association for its fiscal year ended May 31, 1941, as follows:

Income tax	\$1,952.15
Excess profits tax	1,270.32

The principal issue now in controversy is whether any of the amounts received by the petitioner during the year in question are taxable [26] to it as its income. In the event this issue is decided in the respondent's favor, a second issue is presented, whether the sum of \$7,559.11, paid by the petitioner to its members during the taxable year, may properly be deducted from gross income.

FINDINGS OF FACT

The petitioner is a corporation organized on March 26, 1940, under the general corporation laws of the State of California. Its income, declared value excess profits and defense tax return and its excess profits tax return for the year involved were prepared on the accrual basis and were filed with the collector of internal revenue for the first district of California on August 15, 1941.

The petitioner was organized to succeed an unincorporated association of the same name, which was organized in 1935.

The petitioner is a sales organization engaged in the purchase of box shook, i.e., unassembled parts of wooden boxes, exclusively for export purposes. During the year in controversy, it purchased shook from its member-stockholders only. It has twelve such members, all of whom are associations engaged either in the manufacture or distribution of lumber products, or both. The shook so purchased by the

petitioner was sold by it to its customers in foreign countries.

The petitioner does not make purchases from its members upon any standard rate or price basis. When an order for shook is placed by a foreign customer, the petitioner first obtains the necessary data from the customer, including information as to specifications, shipping schedule and quantity. It then contacts its members to ascertain the "minimum [17] satisfactory price" at which the members would agree to handle the particular order.

These negotiations with the members usually are not reduced to writing. The petitioner conducts its business with its members in an informal manner, much of it being handled by telephone.

After it obtains the minimum price at which the members will produce the shook, the petitioner endeavors to secure a higher price from the customer. This usually amounts to an additional margin of from 8 per cent to 10 per cent of the original "minimum" price. It is added to provide against unforeseen items of expense.

The members bill the petitioner for shook sold on the basis of the "minimum" price and the petitioner settles with them currently on that basis at a discount. This is done since the final profit from the transaction cannot be determined for some time owing to the distances which the products must travel and the unforeseen expenses which may arise.

Neither the articles of incorporation nor the by-laws of the petitioner require that amounts received

by it in excess of the cost of the goods sold should be distributed to its members upon any patronage basis. There is an understanding, however, between the petitioner and its members that any amounts received in excess of actual cost, with the exception of amounts placed in a reserve for anticipated claims, is to be returned to them.

At the close of the fiscal year the directors determined the amount of profits which could be distributed without endangering the [18] reserve fund. These amounts were distributed to the members upon the basis of the amount of board feet of shooK which each shipped during the year.

On or about May 28, 1941, the petitioner made distributions to its members out of earnings of that year totaling \$7,559.11.

In its income tax return the petitioner reported total income of \$50,865.03 and net taxable income of \$13,317.66. It did not include in its gross income either the amounts distributed to the members during that year nor the sum of \$4,000 entered in its books as a reserve for anticipated claims. It now concedes the non-deductibility of the latter item in the event it is determined that the corporation is taxable.

OPINION

Van Fossan, Judge:

The fundamental issue before us is whether the petitioner had any taxable income of its own or whether its income was actually, at all times, the income of its members. In the event our determination of this issue is adverse to the petitioner a

further issue arises, namely, whether the petitioner is entitled to a deduction in the amount of the distributions made to its members on May 28, 1941.

There may be some question whether the first-stated issue was properly raised in the pleadings. Although the respondent directed attention to the alleged defect at the hearing, no motion to amend the petition was made and the respondent consequently contends that the issue is not properly before the Court. However, we do not choose to [19] rest our decision on the possible defect in the pleadings for, assuming that the issue was properly raised, the petitioner can not be sustained.

The petitioner relies on no specific statutory provision for exemption but asks us to find that it was merely an agent for its members,—a mere conduit through which the income flowed,—and that all its earnings were in reality the property of its members and not its own taxable income. This we can not do.

The petitioner was organized under the general corporation laws of California, not under the statutes providing for cooperative associations. No explanation was given for this action. The statutes under which an association is organized are not controlling, however, if it is actually organized and operates as a true cooperative. *Eugene Fruit Growers Association*, 37 B.T.A. 993; *United Cooperatives, Inc.*, 4 T. C. 93. In order to be a true cooperative, there must be a legal obligation on the part of the association to return to the producers, on a patronage basis, all funds received in excess

of the cost of the goods sold. Such an obligation may arise from the association's articles of incorporation, its by-laws, or some other contract. *Midland Cooperative Wholesale*, 44 B.T.A. 824.

Here we find no evidence of such a legal obligation. There was no provision in either its articles or by-laws requiring the petitioner to distribute all its profits to its members on a patronage basis. Neither were there any express written contracts with the members to that effect. The most we find was an "understanding" between the peti- [20] tioner and its members that all sums received in excess of the cost of selling the shock and in excess of the amounts placed in the reserve for anticipated claims, should be returned to the members.

It does not appear, however, that this understanding was carried out in practice. During the year in controversy the petitioner made distributions to its members of \$7,559.11 and had in its reserve the sum of \$4,000. Yet it reported a taxable income, after deducting both of these items, of \$13,317.66. What disposition was to be made of this amount, we do not know. There is nothing in the record to show that it could not be used for the payment of dividends on the stock, or for any other purpose. Other than the amounts actually distributed to the members, of which we shall speak later, there is nothing to show that the petitioner's earnings were not its own which it could use for any ordinary corporate purpose.

In support of its contention, the petitioner relies principally upon *San Joaquin Valley Poultry Pro-*

ducers' Association v. Commissioner, 136 Fed. (2d) 382. However, the facts in that case were materially different from those before us. There the petitioner was organized under the Agricultural Code of California, which provided that "Associations organized (under Chapter 4 thereof) shall be deemed 'non-profit', inasmuch as they are not organized to make profit for themselves, as such, or for their members, as such, but only for their members as producers." The petitioner's articles of incorporation provided that it "shall conduct and carry on its business without profit to itself." Its by-laws provided that it "is organized as a nonprofit cooperative association"; [21] and that "The 'net proceeds' resulting from the operation of the business, if any, shall belong to the members."

The petitioner in that case engaged in the business of marketing eggs for its members and selling supplies to its members and others. It did not pay its members the entire net proceeds of the eggs that it marketed for them but retained certain amounts which it placed in three reserves, crediting to the members the proportionate share of each in the sums so retained. It was the amounts so retained which the respondent sought to tax.

The Court held that the sums in question were not the property of the petitioner but were that of its members; that to hold otherwise would be to hold that the petitioner could and did make a profit for itself in contravention of its by-laws, its articles of incorporation, and the statute to which it owes its existence. It was pointed out that the petitioner

never pretended to be the owner of the sums but as required by its by-laws, prorated and credited them to its members. The court concluded that, since none of the sums ever belonged to the petitioner, they could not be, and were not, its income.

Here, however, as we have noted, neither the statute under which it was incorporated, its articles of incorporation, its by-laws nor any other contract forbade the petitioner from having income of its own. Under such circumstances, it can not be said that the petitioner's income was actually that of its members.

We turn, therefore, to a consideration of whether or not the petitioner is entitled to deduct from its gross income those amounts which [22] it actually distributed to its members during the year in question. Deductions are available to taxpayers only by virtue of statutory provisions. Not every payment out of income creates a legal deduction. Here again the answer turns upon whether or not the right of the members to these amounts arises by reason of the corporate charter or by-laws or some other contract, and is not dependent upon some subsequent corporate action taken by the officers or directors. *United Cooperatives, Inc.*, *supra*; *Midland Cooperative Wholesale*, *supra*. The petitioner contends that such a right inhered in its members and that it is entitled to the deduction. The respondent asserts that the petitioner was under no legal obligation to make the payments and that the distributions were in the nature of dividends, hence not available as statutory deductions.

As we have indicated above, there was nothing in the petitioner's articles of incorporation or by-laws imposing upon it the obligation to distribute its excess revenue among its members. The question is, therefore, narrowed to whether or not such an obligation existed because of some other contract or contracts between the petitioner and its members.

The petitioner contends that such a contract existed by virtue of the "understanding" between the petitioner and its members that they were to receive all the profits in excess of cost and the additions to the reserve. This contention is not borne out by the evidence. The testimony shows that it had originally been contemplated that excess revenue should be distributed by way of dividends on the stock. At a [23] meeting of the stockholders, held May 6, 1940, a motion was made that the by-laws be amended to effect the distribution of excess revenue among the members upon the basis of the dollar value of shipments made by each member. This amendment was never put into effect. It was finally decided that the basis for distribution, proposed in the motion, was not practicable and that "the only fair method of distribution" was upon the basis of board feet of shook shipped by each member. However, no formal action in this regard was ever taken.

It is apparent from the record also that no amounts were distributable to the members without prior action on the part of the petitioner's board of directors. This is shown by the following excerpt

from the minutes of the meeting of the Association held July 29, 1940:

Attention was further called to the fact that the Association had been set up as a non-profit organization with the understanding that any excess received from the sale of shooK over expenses would, upon action of the organization, be subject to distribution as additional realization on shipments made during the period when such surplus was accumulated. [Emphasis supplied.]

This was likewise the understanding of the petitioner's members. One of the witnesses, who was general manager of a member association and a director of the petitioner, testified as follows:

* * * We invoiced the American Box ShooK Export Association at the minimum price, and that is all we did until later, if I would attend a meeting of the Export Association and as a director of the Association learn that it was contemplated paying another dollar per thousand to certain shipments, then I would go back to our office and set up a debit against the Association.

The taxpayer points to no statute authorizing the claimed deductions. Clearly they are not deductible expenses. The petitioner was under no obligation to make distributions to its members until the board [24] of directors had so acted. Whether the payments were in the nature of dividends we need not decide. But see *Fontana Power Co.*, 43 B.T.A.

1090, affirmed 127 Fed. (2d) 193; Juneau Dairies, Inc., 44 B.T.A. 759. We are of the opinion that the petitioner is not entitled to the deduction in any event and that the respondent's determination must be sustained.

Decision will be entered under Rule 50. [25]

The Tax Court of the United States
Washington

Docket No. 777

AMERICAN BOX SHOOK EXPORT
ASSOCIATION,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the Court's Findings of Fact and Opinion, promulgated February 12, 1945, the respondent having filed a recomputation of tax on March 3, 1945, and the petitioner having filed an acquiescence in said recomputation on April 9, 1945, it is

Ordered and Decided: That there are deficiencies in income tax and excess-profits tax in the respective amounts of \$1,952.15 and \$1,270.32 for the fiscal year ended May 31, 1941.

Entered April 11, 1945.

(Signed) ERNEST H. VAN FOSSAN
Judge. [26]

Before The Tax Court of the United States

Docket No. 777

In the Matter of

AMERICAN BOX SHOOK EXPORT
ASSOCIATION,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Room 401, Civic Auditorium,
San Francisco, California
September 20, 1944—9:30 a.m.

(Not pursuant to notice.)

Before: Honorable Ernest H. Van Fossan, Judge.

PROCEEDINGS

The Clerk: At this time we call Docket No. 777,
American Box Shook Export Association.

Mr. Murray: Ready for the Respondent.

The Clerk: Will you state your appearances for
the record, please?

Mr. Wallace: For the Petitioner, W. R. Wallace,
Jr., and Frank L. Muncy.

Mr. Murray: For the Respondent, Arthur L. Murray.

Mr. Wallace: Shall I proceed with the opening statement, Your Honor?

The Court: What is the name of the second gentleman?

Mr. Wallace: Muncy, M-u-n-c-y; Frank L. Muncy.

The Court: You may proceed with the opening statement.

OPENING STATEMENT ON BEHALF OF THE PETITIONER

By Mr. Wallace

Mr. Wallace: If Your Honor please, the Petitioner in this matter is a California corporation, organized on March 26, 1940, to succeed an unincorporated Association of the same name, which in turn was organized in 1935. The corporation and its predecessor Association were both registered under the Webb-Pomerene Act to permit the corporation to engage only in the export trade. [30]

As stated upon its tax return, its sole and only business was the exporting of lumber products for its various member under the condition of the Webb-Pomerene Act.

The corporation, during the taxable year and since, has had twelve members. All of those members are engaged either in the manufacture or in the sale of lumber and lumber products, or in both the manufacture and sale.

It made no purchases of lumber or lumber products from any but its members. We don't have a case where there is some business with members and some business with non-members.

The tax here involved is for the fiscal year of June 1, 1940 to May 31, 1941. The Commissioner has levied an additional tax on two principal items.

The first is an item of \$7,559.11, which the corporation paid to its members during the fiscal year as additional realization on shipments made during that year, and the second is the sum of \$4,000, which was set up on the books of the corporation as a reserve for anticipated claims.

There are three questions involved in the case.

The first and broad question is whether a corporation whose sole business is to export lumber products for its members without profit is subject to a tax at all, or whether its income is not the income of its members and to be taxed to them under the doctrine of the San Joaquin Valley Poultry [31] Producers Association cases, and the California Pine Box Distributors case, and other similar cases.

If this first question should be answered in the affirmative by the Tax Court, the other questions are of no consequence. If the first question, however, should be answered in the negative, then there are two other questions which arise.

The first of those questions is, Was the specific sum of \$7559.11, which was paid by the corporation to its members during the fiscal year as additional realizations on sales, properly excluded from the in-

come tax returns filed by the corporation as income of the corporation?

The second question relates to the possible tax upon an item of \$4,000 set up on the books of the corporation as a reserve for anticipated claims.

With respect to this last item, the only question raised by the Respondent Commissioner is whether the claims have been received and allowed during the taxable year. It is apparent, of course, that if the corporation is taxable at all, a bad debt or claim deduction can be asserted in the following year, and in the following year the claims were actually allowed and paid. We therefore agreed with counsel for the government to waive any contest on the tax on the \$4,000 item for the fiscal year in question, in the event that it be determined that the corporation is taxable at all. [32]

Coming just for a moment to the pleadings. The government has admitted the first three paragraphs of the petition, that is, it has admitted the corporate status of the petitioner, the notice of deficiency, and that the taxes are taxes for the fiscal year ending May 31, 1941. All the other allegations of the petitioner have been denied.

There are a couple of other minor matters that I think I should clear in the pleadings before we proceed.

On Page 2 of the deficiency notice is the explanation as to the adjustments made by the Commissioner. The first has to do with the \$7559.11 item, which was disallowed, and the explanation in that respect, to quote the letter, "No binding obligation

to make such payments was in existence before the profits were earned." That presumably being the Commissioner's position.

The item marked (b), incorporation expense of \$335, we are making no contest about at all, so that may be disregarded.

The item marked (c), accounting fee of \$150, we also make no contest about. That may be disregarded.

The item marked (d), which is the \$4,000 item set up to cover anticipated claims I just referred to in the opening statement. We will have no contest on that.

The other two items referred to, paragraphs (e) and (f), have been allowed, and there is no contest on those [33] items.

The Court: Mr. Murray.

OPENING ARGUMENT ON BEHALF OF THE RESPONDENT

By Mr. Murray:

Mr. Murray: If Your Honor please, I would like to call attention to the fact that, according to my understanding, the matter of the taxable status of this corporation was not pleaded. That is why in the 90-day letter, as counsel has stated, the reason given was that no binding agreement was in existence, referring only to the \$7559.11 item, which was claimed as a deduction, as an addition to cost of goods sold, so I submit that there has been no issue of that kind raised in the pleadings at all, so that is something new.

It is true that the government's position, answering fully the contentions of the taxpayer's representatives up to now has been that this item which they distributed to their shareholders during the taxable year is not an allowable deduction on any basis. As a matter of fact, they used it as a cost of goods sold, as an additional deduction, and we have denied that, and those are the issues as I understand them in this case.

Mr. Wallace: If I may just make a remark as to that?

I call counsel's attention to Page 2 of the petition, and on that page, paragraph 5 states: [34]

"The petitioner was organized as a non-profit Association for the purpose of conducting export trade at cost in behalf of its members."

That seems to be the first fact which was to be relied upon. The second is that:

"The Association was availed of to handle the foreign trade of the respective members, chiefly to simplify the preparation of export documents and to eliminate the necessity of individual members keeping in touch with foreign exchange fluctuations, and similar details of export trade. Further, it has been the policy of the Association to settle with its members on the basis of a preliminary billing price for shook furnished, with the definite understanding that any excess received from the sale of shook over expense would be subject to distribution as additional realization on shipments made during the period when such excess was accumulated. * * *"

The Court: Those statements appear in the paragraph which deals with facts in the petition?

Mr. Wallace: That is correct, Your Honor. I refer to them now only as a preliminary to what I was about to say.

It is true, as counsel for the government has suggested, that as the petition was drawn the objections urged in the petition——

The Court (Interposing): You mean the errors alleged? [35]

Mr. Wallace: I beg your pardon?

The Court: You mean the errors alleged?

Mr. Wallace: The errors alleged in the petition are referred to the additional assessments. There is no question of that. The whole petition is directed toward the additional assessments.

The Court: Will you run over again the several paragraphs of the errors alleged, and indicate which ones are contested and which are not?

Mr. Wallace: Yes, Your Honor.

The Court: On Page 1 of the petition.

Mr. Wallace: The first three paragraphs of the petition are not contested by the government. They have been admitted in the pleadings. The paragraphs in the petition numbered 4, 5——

The Court: I understand they have been denied.

Mr. Wallace: They have been denied.

The Court: I understood you to say, though, that some of these errors were not in issue?

Mr. Wallace: Yes, Your Honor.

Now, coming to that, if Your Honor will turn in the petition to Page 2 of the letter attached to it——

The Court: Let us look at the petition itself. How about error 4(a)? Is that in issue?

Mr. Wallace: That is in issue, Your Honor, and 4(b) is in issue, and 4(c) is in issue, and 4(d) is in issue.

4(e), Your Honor, is not in issue, except that it is our contention that, as a non-profit organization, the petitioner was not taxable at all.

If the Tax Court should hold that the petitioner was taxable at all, then the specific question of a tax upon this \$4,000 item is not in dispute as between us.

The Court: Will you proceed with the evidence?

Mr. Wallace: Mr. Hudson, please.

Whereupon,

C. D. HUDSON

called as a witness for and on behalf of the Petitioner, having been first duly sworn, was examined and testified as follows:

Direct Examination

The Clerk: May we have your name, please, sir?

The Witness: C. D. Hudson.

By Mr. Wallace:

Q. Where do you reside, Mr. Hudson?

A. Washington, D. C.

Q. What is your business?

A. I am manager of the American Box Shook Export Association, and manager of the National Wooden Box Association.

Q. The first company referred to, the American

(Testimony of C. D. Hudson.)

Box Shook Export Association is the taxpayer involved in this litigation? [37] A. It is.

Q. How long have you been the general manager of the American Box Shook Export Association? A. Since its organization.

Q. When was that?

A. It was first organized in 1935 as an unincorporated, non-profit Association, and then in 1939 the corporation was formed under the same name.

Q. And you have continued as general manager from inception to date? A. I have.

Q. And you were general manager during the taxable year here in question, the June 1, 1940 to May 31, 1941? A. Yes.

Q. What is the business of the petitioner corporation?

A. The exportation of box shook, primarily, and to date, solely. We might export other lumber products, but the volume has been confined to box shook.

Q. Do you do any domestic business?

A. None whatever.

Q. Have you ever done any domestic business?

A. No.

The Court: For the purposes of the record, what is a shook?

The Witness: It is component parts of a wooden box [38] before assembly, merely an unassembled wooden box.

(Testimony of C. D. Hudson.)

By Mr. Wallace:

Q. How many members are there in the petitioner corporation? A. Twelve.

Q. Can you list those members for us?

A. New England Box Company—Do you wish the addresses?

Q. I don't think it is important. I wish you would just, when you are listing them, state whether they are manufacturers or sellers of lumber, or both? A. Yes.

Mr. Murray: May I ask whether this list which you are giving are the members of this Association before the Court, or the other Association which you referred to?

The Witness: Members of the American Box Shook Export Association, Incorporated, and now before the Court.

New England Box Company, manufacturers; E. H. Barnes Company, manufacturers; Western Pine Mfg. Co., Ltd., manufacturers; the Brewer Pine Box Company, manufacturers; the White Pine Sash Company, manufacturers; Ewauna Box Company, manufacturers; the Kesterson Corporation—I believe that is—

Mr. Wallace: Lumber Corporation?

The Witness: Lumber Corporation, manufacturers; the Weyerhaeuser Sales Company, a sales organization. [39]

The Court: Is that Weyerhaeuser?

The Witness: Yes, W-e-y-e-r-h-a-e-u-s-e-r?

The American Box Corporation, manufacturers

(Testimony of C. D. Hudson.)

and sales organization; the Western Pine Box Distributors, sales organization; the California Pine Box Distributors, sales organization; the Dwight Lumber & Box Co., sales organization.

By Mr. Wallace:

Q. So that the record will be clear, will you state what you mean by a sales organization?

A. An organization primarily handling the sales of one or more manufacturers, either on a cost basis or on the usual wholesale commission basis.

Q. Does your corporation, American Box Shook Export Association, do any business with any lumber manufacturing or lumber sales organization or corporation in the United States, except its own members? A. No.

Q. Has it done any business except with its own members? A. No.

Q. Did it do any business except with its own members in the fiscal year in question?

A. No, it did not.

Q. Will you explain to us the manner in which you do business for your members in foreign trade?

A. We first develop an inquiry from a foreign export customer, secure the necessary information as to specifications and shipping schedule, quantity, and then we contact our members to see whether they might be interested. We find out what price might be the minimum at which they would be willing to handle this business, to determine what shipping schedules might be maintained, and after securing from our members a fairly firm commit-

(Testimony of C. D. Hudson.)

ment as to performance and as to the minimum price at which they would be willing to handle this business, we then make an offer to the customer, and by negotiation work out then a definite sale to the customer, based upon commitments made with our own members.

The Court: We will take a brief recess at this moment.

(Short recess.)

The Court: You may proceed.

Mr. Wallace: Will you read the last question and answer, please?

(Record read by Reporter.)

By Mr. Wallace:

Q. Mr. Hudson, in your answer to the last question, you said, "We do this and we do that." Whom did you refer to as "we"?

A. Well, I referred to myself, and, of course, the staff such as we have had at times. At the beginning, all [41] activities were handled almost exclusively by myself; in fact, all transactions and all commitments. As the organization has grown, it has been necessary to have an assistant sometimes here in San Francisco, and then again in Washington, as we now have. But I have personally handled and have supervised practically all of the sales and all of the commitments with members.

Q. Will you tell us what your duties as general manager of this Association are?

A. From the beginning they have been to make

(Testimony of C. D. Hudson.)

the sales and the foreign contacts, to arrange for production with our members, to arrange for financing, supervise the actual shipment, the loading, take care of the collection and pay the accounts; naturally supervise the keeping of the record and the other details.

Q. This Association has other officers, that is, a president and vice-president, and a secretary and treasurer? A. Yes.

Q. What are their duties?

A. Well, they are chosen from among the directors. Their duties might include countersigning of checks. They might on call, and when it may be necessary to lay down policies and to review activities, to check on the status of the foreign market, and to take care of other subjects which would be related to policy and the general conduct of the [42] organization.

Q. Well, the directors, I take it, each represent a member, each of the directors represents a member? A. That is right.

Q. There are no directors except as representatives of members? A. That's right.

Q. Who calls them together? Do you?

A. The president calls them. Usually I suggest to the president that it might be proper that there be a meeting of directors and possibly it may coincide with the trip I am making to the West Coast here, and then I issue the call in his name, and of course the annual meeting is determined by the by-

(Testimony of C. D. Hudson.)

laws. We attempt to conform to that as nearly as convenient.

Q. In your answer to a prior question, you referred to a minimum price. Will you explain a little what you intended to convey by that? You said you got a minimum price from your members.

A. Well, in presenting an inquiry to our members, we must necessarily include some items or some factors there that are not definitely fixed at the time, such as probably delivery requirements, approximate maximum requirements of the customer, and sometimes there is a little doubt about specifications. We talk those things over, and naturally we find [43] that our members are of different opinions. We then work out what would be known as a "minimum satisfactory price" to the majority of the members, generally to all who are engaged in that type of production. It is understood, however, that if we are able to secure a higher realization than that, we will do so. We will not commit any member to produce at less than that price. The hazards of export trade are numerous, and we cannot always anticipate what the expense will be of handling an order. We have to protect ourselves against unknown factors, such as the loss of shipping space, or increased insurance rates, or increased rail rates, sometimes. We must protect ourselves against claims which we may feel are just or unjust, which always involve not only the f.o.b. mill cost, but possibly the delivered cost, which frequently is twice as much as the f.o.b. mill.

(Testimony of C. D. Hudson.)

Under that arrangement then we have this mill price at which the mill will produce, and then it is our obligation to do our best to secure more than that.

Q. Then do you add something to that price to establish the price to the consumer in South Africa, we will say?

A. Yes, we add the usual margin, which is basically around 8 per cent. It might vary from 8 to 10 per cent, and if there are unknown factors of expense, we sometimes take those into account. Then in actually making the shipment, completing the sale, collecting the money, none of these contingencies may have developed. Some items of expense may have been [44] saved, and so our realization is a little more—our net realization is a little more, or the expense of doing business is a little less, which leaves a residue, and under our form of operation this residue must be considered as additional realizations. We attempt to set up a necessary reserve for such contingencies as may further develop, but anything above that necessary and justifiable reserve is looked upon purely as additional realization over and above the minimum price at which the member was willing to produce, which we might call a preliminary billing price.

To explain further, we settle with the member on the basis of that minimum price. We discount our bills. We must take advantage of every possible saving. We discount our bills; we pay our members within the discount period, and therefore

(Testimony of C. D. Hudson.)

it is necessary to have some fixed price which we may make a settlement. Frequently it is not known before months later, whether a given sale or a transaction has been more or less favorable than anticipated; therefore the final adjustment must come months and a considerable time after the preliminary or the billing price has been paid and the transaction more or less closed up to that point.

Q. You say that it is frequently months later. Where did you sell most of your shook?

A. The great bulk has gone to South Africa. Of course, we have sold—I believe during the same period we shipped to [45] the Persian Gulf; we shipped down into the Indian Ocean; we have shipped quite a volume to the United Kingdom. We have shipped some to Ireland; one or two shipments to South America.

Q. Then you cannot finally close your books and determine how much money you have made, what the final realization is on a particular shipment until the shipment has got there, you know whether there are any claims, and if so, whether the claims are sound, know what your insurance rates actually have been, your ocean transportation, all those items.

Mr. Murray: If Your Honor please, I will have to ask that counsel does not lead this witness quite that much. It amounts almost to testimony by him.

The Court: I think counsel will agree he is leading the witness.

Mr. Wallace: Yes, I would.

(Testimony of C. D. Hudson.)

By Mr. Wallace:

Q. Will you state to us, Mr. Hudson, please, why there is a period of several months between the establishment of your preliminary, or preliminary price and the final determination of the final ultimate return from a particular shipment?

A. Yes. We enter into a contract with our customer, covering possibly a total given number of box shooks to be delivered over a period which may vary from three months up to nine months. The variable factors there may be rail freight to port, port charges, handling charges. And sometimes, in certain items of insurance, ocean freight, and of course [46] claims.

Under wartime conditions we attempt to freeze as many of these factors as possible. Some of them are fixed subject to variations which will be to the customer's account, but there is no way at all—we have never found any way to freeze all the hazards and factors of expense.

As an illustration, under present conditions we ship entirely from New York. We start the shipments east, thinking that we have ocean space arranged, and when the shipments are half way there, the government takes the space away from us. We must have at all times warehouse space available at some point in the east. Therefore we must start this shipment out on a warehousing and transit basis.

We have even had the government take warehouses away from us while shipments were in tran-

(Testimony of C. D. Hudson.)

sit. We have had warehouse space at Newark, at Trenton, Jersey City, I believe sometimes at Baltimore. The hope is that we will be able to unload cars directly into the vessel, but very often we will have to unload them into a warehouse. Then we have even had cars and shipments made on barges, taken out into the New York harbor, pulled alongside vessels, and in the process, or before a bundle of box shook has been moved, the ship has been taken away from us. We have had to move those shipments back into a warehouse. Every handling involves breaking of bundles and additional expense, and those items as they pile up of course [47] must be taken care of somewhere with our customers, eight, ten thousand miles away. We must assume full responsibility to get the load on and to surmount all of those difficulties and obstacles.

Now, conditions at the beginning of a deal may be greatly different from those at the end. I refer as an example—I would say that if we are handling a million box shook in June, the conditions might be quite favorable to production. Dry material is available. It may be June or July, and we have ideal conditions.

When we get into the latter part of the year, November, December, we may have difficulties that we never anticipated during the summer months, so we don't know until the whole shipment is completed just what our expenses will be. Then, two months later we may get a cable from South Africa

(Testimony of C. D. Hudson.)

indicating that at some interior point they are finding that mold has developed, certain shipments were apparently too damp. These shipments crossed the Equator. We sometimes find that the holds of vessels are in condition where considerable condensation occurs, seepage or dripping of water on this shipment. Perhaps the moisture content has been no higher than 18 per cent, what we attempt to achieve at time of shipment, but en route there is a considerable condensation in the hold. That is a very familiar complaint, and so, at destination, we don't know whether it has been our fault or [48] the fault of conditions beyond our control.

At any rate, claims develop, cables come in, merely warning us that a claim is developing. Three months later we may know what that claim is. Six months later we may get word that the claim never amounted to anything, as has happened, and then again six months later we have had bad news.

Q. You referred in your answer to a minimum understanding with your members on the preliminary sale price. Does that understanding with your members with respect to each sales contract apply to all the sales contracts? A. Yes.

Q. Was that understanding reduced to simple written form?

A. No, not necessarily. I think that our minutes will show—carry some statements of policy, but in the main this relationship between myself and the mills has been a personal one, handled by personal calls. I have, since 1935, made usually three to

(Testimony of C. D. Hudson.)

eight trips to the West Coast annually. I have tried to keep rather closely in touch with these mills. Frequently the principals of these concerns are in the East, and they usually call on me there in Washington when they are in that vicinity. Then we use long distance telephone quite often. This is an understanding that has grown up from the inception of the organization. [49]

My proposal to members of this industry when we set up the organization in 1935 was that this would be a service organization, actually just an export department of their own firms. There would be no profits accrue. It would be operated merely on the basis of meeting its own expenses so far as possible during the first thirty months of the organization.

Mr. Murray: May I interrupt?

If Your Honor please, I will ask that this go in by question and answer now, instead of narrative, because it is getting to the point where I want to object, and I have difficulty doing so in a narration. I ask that this be done, please, so I can protect myself on the record.

The Court: If you will conform to that practice.

Mr. Wallace: Yes, Your Honor.

By Mr. Wallace:

Q. Mr. Hudson, who prepares the minutes of the American Box Shook Export Association?

A. I have done so in all cases where I have been present at the meetings, and that covers possibly 90 per cent.

(Testimony of C. D. Hudson.)

Q. And you then have them mimeographed?

A. That's right.

Q. What is the purpose of the mimeographing?

A. We send a copy of the minutes to all members.

Q. I hand you a book here and ask you if you will look [50] at it and tell us what it is?

(Handing.)

A. Well, this is a file of the minutes of the American Box Shook Export Association, including, I believe, notices of meetings and possibly some other similar material.

Q. Is that a book that you keep?

A. This comes from our files in Washington.

Q. It is kept under your direction?

A. Yes.

Q. I call your attention to the minutes of the meeting held on May 6, 1940, and ask you if those minutes were prepared by you?

A. Yes, they were.

Q. Were they sent around to all the members?

A. Yes.

Q. I call your attention to one item appearing on the second page of the minutes of the meeting of May 6, 1940, and ask if you will read the last paragraph?

Mr. Murray: May I see that?

Mr. Wallace: Surely. (Handing).

By Mr. Wallace:

Q. Will you read it for the record?

(Testimony of C. D. Hudson.)

A. "Mr. Gordon moved that the by-laws be amended to effect distribution of excess revenue among members on a basis of f.o.b. dollar mill value participation in shipments, rather than as a dividend on stock, such distribution to be [51] made annually as of December 31. Mr. McCulloch seconded the motion, and it was duly enacted."

Q. Were Mr. Gordon and Mr. McCulloch both directors and members at that time, or representatives and members? A. They were.

Q. Mr. Hudson, I hand you another book and ask you if the first pages of this book contain the by-laws and the articles of incorporation of the American Box Shook Association?

A. They do.

Q. On Page 10 of the volume I call your attention to article 18 of the by-laws and ask if you will please read that into the record?

A. "The board of directors of this corporation may adopt, repeal and/or amend the by-laws of this corporation, subject to the power of the shareholders to adopt, amend or repeal such by-laws, or to revoke and/or reinstate such authority by the vote of the shareholders or by the written assent of shareholders, provided, however, that the board of directors of this corporation shall have no authority to change the number of directors or the provisions with reference to the filling of vacancies in the board of directors, as provided in Article 6 hereof."

Q. I hand you the volume you have described as the record of the minutes of meetings of the Peti-

(Testimony of C. D. Hudson.)

tioner Association [52] and ask you to turn to the minutes of July 29th, and ask you if those minutes were prepared by you? A. Yes, they were.

Q. Mr. Hudson, have you an extra copy of the minutes of the meeting of July 29, 1940?

A. I believe in our files here we would have, but I don't know as we have them here.

Mr. Wallace: Do you know, Mr. Muncy? Have we an extra copy?

Mr. Muncy: I will check; I believe so.

Mr. Wallace: Well, if you will just identify that, then instead of having the witness read the portion I had in mind, counsel, I will follow your suggestion and just put in a copy, if I may, Your Honor.

The Witness: Yes, the meetings—the minutes of the meeting of July 29, 1940, were prepared by myself.

Mr. Wallace: I will put in the whole minutes, counsel. I will ask the witness to read the paragraph at the bottom of the first page.

The Witness: "Attention was further called to the fact that the Associaion had been set up as a non-profit organization, with the understanding that any excess received from the sale of shook over expenses would, upon action of the organization, be subject to distribution as additional realization on shipments made during the period when such [53] surplus was accumulated."

Mr. Wallace: Mr. Murray, I think these are duplicate mimeographs, but you might check, and

(Testimony of C. D. Hudson.)

if they seem to be correct, we will put them in evidence.

Mr. Hudson, I call your attention to the fact, which counsel has called my attention to, that the heading of this document or mimeographed document says, "Minutes of the meeting of American Box Shook Export Association, Unincorporated, held at the offices of the Western Box Distributors, San Francisco, California, Monday, July 29, 1940."

I will offer that in evidence as the Petitioner's Exhibit No. 1.

Mr. Murray: I object to that, if Your Honor please, on the basis that it is incompetent, irrelevant and immaterial, being the minute of the unincorporated Association which existed prior to the existence of this incorporation, and it has no bearing on this case.

Mr. Wallace: It is not offered, if Your Honor please, for the purpose either of proving it as a minute, or for the purpose of proving the minutes. The witness has testified previously to an understanding between himself, or the Association and its members with respect of contracts for the sale of lumber. I had asked the witness if those contracts or that understanding had anywhere been reduced to writing. Having identified the documents, I was then going to ask the [54] witness as to whether those statements which he has read were a writing evidencing this understanding.

The Court: It will be admitted. Exhibit 1.

(The document referred to was marked and

(Testimony of C. D. Hudson.)

received in evidence as Petitioner's Exhibit
No. 1.)

PETITIONER'S EXHIBIT No. 1

National Wooden Box Association
308 Barr Building, Washington, D. C.

MINUTES OF MEETING

of

AMERICAN BOX SHOOK EXPORT
ASSOCIATION (Unincorporated)

Held at Offices of Western Box Distributors, San
Francisco, Calif. Monday, July 29th, 1940

Present:

Albert Pearlman, American Box Corporation.

J. F. O'Brien, California Pine Box Distributors.

A. W. Pinger, California Pine Box Distributors.

A. H. Gordon, Clover Valley Lumber Company.

J. Walter Rodgers, Western Box Distributors.

Walter Slack, Counsel.

Rollin Rodolph, Accountant.

W. A. Clayton, American Box Shook Export As-
sociation.

C. D. Hudson, American Box Shook Export As-
sociation.

Mr. Rodgers, president of the Association, called
the meeting to order. An announcement was made
that Mr. Rodgers and Mr. O'Brien, secretary, had
received proxies from the following members:

E. H. Barnes Company.

New England Box Company.

(Testimony of C. D. Hudson.)

Kesterson Lumber Corporation.

Western Pine Mfg. Co., Ltd.

Weyerhaeuser Sales Company.

White Pine Sash Company.

Brewer Pine Box Company.

It was stated the proxies carried instructions that the Association's surplus be made available for use of the incorporated association.

The manager of the Association called attention to the audit as of May 31, 1940, which showed a surplus in the amount of \$8,942.91. The manager stated a letter had been addressed to the Commissioner of Internal Revenue asking whether any surplus held by the Association upon dissolution was subject to tax.

Attention was further called to the fact that the Association had been set up as a non-profit organization with the understanding that any excess received from the sale of shook over expenses would, upon action of the organization, be subject to distribution as additional realization on shipments made during the period when such surplus was accumulated.

It was stated the surplus as of May 31 had been accumulated during the period from March 1st to May 31st, during which time the Association shipped a total of 8,204,963 ft., purchased from seven members in the following amounts and percentages:

(Testimony of C. D. Hudson.)

	March-April	May	Total	Percent.
American Box Corporation	987,631	1,342,304	2,329,935	28.40
Brewer Pine Box Company	317,808	206,800	524,608	6.39
California Pine Box Dist.	554,400	1,123,800	1,678,200	20.45
Dwight Lumber & Box Co.	99,000	802,500	901,500	10.99
Western Box Distributors	682,920	1,143,600	1,826,520	22.26
Western Pine Mfg. Co., Ltd.	277,200	169,000	446,200	5.44
Weyerhaeuser Sales Company	297,000	201,000	498,000	6.07
	<u>3,215,959</u>	<u>4,989,004</u>	<u>8,204,963</u>	<u>100.00</u>

The following resolution was then submitted:

Whereas, the American Box Shook Export Association was organized as a non-profit association for the purpose of conducting export trade at cost in behalf of its members, and

Whereas, the financial report of the Association as of May 31, 1940, shows a surplus in the amount of \$8,942.91, therefore, be it

Resolved: That the invoiced mill value of shipments made from March 1st to May 31, 1940, be increased to the extent of \$1.00 per M, said increase to be evidenced by invoices submitted by respective members covering all shipments during the period named, and

Whereas, the American Box Shook Export Association has voted to change its status as of June 1, 1940 to that of a corporation, and

Whereas, the incorporated association may require temporarily the use of cash funds in excess of its fixed capital, be it further

Resolved: That the respective amounts due members for additional invoice value applic-

(Testimony of C. D. Hudson.)

able to shipments from March 1st to May 31st be placed in the hands of C. D. Hudson as trustee, and that said C. D. Hudson be authorized to allow the American Box Shook Export Association (incorporated) to use such funds at no interest charge until the said incorporated Association has accumulated a surplus above expenses in an amount equal or approximately equal to such funds.

Affirmative votes for the foregoing resolutions were cast in behalf of the following members:

American Box Corporation
 California Pine Box Distributors
 Kesterson Lumber Corporation
 Clover Valley Lumber Company

Holders of proxies felt they could not cast votes in favor of the resolution without violation of instructions. The following motion was then duly presented and enacted:

Moved, that the above resolution be placed before the membership of the American Box Shook Export Association (unincorporated) by mail ballot.

C. D. HUDSON

Mr. Murray: May I place another exception on the record, if Your Honor please? I also object to this on the basis that this taxpayer corporation could in no way be bound by an agreement between

(Testimony of C. D. Hudson.)

someone who was handling their business for them and some of their members, and for that reason this document is incompetent. I don't know the reason that counsel had in mind, but he just stated that he is trying to prove by some agreement that this witness had with a prior organization, they are going to try to prove something that he feels might bind this corporation, which I submit is incompetent evidence.

The Court: Proceed.

Mr. Murray: May I have an exception, please?

By Mr. Wallace:

Q. Mr. Hudson, do either of the statements you have read reflect the understanding you have just testified to?

Mr. Murray: I object on the basis that is incompetent, irrelevant and immaterial to this case.

The Court: Objection overruled.

Mr. Murray: Exception, please. [55]

A. The second statement reflects the understanding we have had and do have at the present time with our members.

Q. Under the date of July 29, 1940, or previous thereto, or when?

Mr. Murray: Same objection, if Your Honor please.

The Court: Objection overruled.

Mr. Murray: Exception, please.

A. It accurately reflects the understanding I have had from the very beginning of this project, whether unincorporated or incorporated.

(Testimony of C. D. Hudson.)

Q. I call your attention, Mr. Hudson, to the fact that in the reference made in the minutes of May 6, 1940, a reference is made to an f.o.b. dollar mill valuation, and in the later reference made in the minutes of July 29th, a reference is made to an additional realization on shipments made. Is there a difference between those two?

A. There is, yes.

Q. Will you explain what the difference is?

A. Well, one was to provide for the final payment based upon dollar of shipments of respective members, and the other based upon footage shipped.

The motion to amend the by-laws, as presented by Mr. Gordon, represented an effort to formally put into our by-laws a procedure or a method of final settlement, and at [56] that time apparently it was thought that dollar value of shipment would be the right basis of computing the additional realization. It was not, however, very well conceived at the moment, we found, because that was not the method we had used previously, and it was not entirely a fair method. We sold everything on the per thousand foot basis, that is, we computed everything. We actually sell the customer on a unit basis per box, but in dealing with our own members all of our conversations were based more or less upon realization per thousand board feet, and we made all computations of costs on that basis, and so, when it came to the matter of actually distributing the residue from a certain transaction over a given period, it was quite apparently the only fair method

(Testimony of C. D. Hudson.)

of distribution, was to put it on a per-thousand-foot basis.

Q. Per thousand feet of what?

A. Box shook, computed according to our standard method of figuring the footage in box shook.

Q. What was the relationship between a mill, or a member, and the per thousand feet?

A. Well, if one member shipped a half a million feet during a given period, and we found that our realization was approximately \$2 a thousand more than the minimum price, then that member would be entitled to \$1 per thousand on 500,000 feet.

Q. Per thousand feet of lumber shipped? [57]

A. Of box shook, yes. Another member, shipping only 100,000 feet would be entitled to \$1 per thousand on 100,000 feet.

Q. Mr. Hudson, did you or the American Box Shook Export Association make a distribution of the additional funds realized from shipments on or about May 28, 1941?

A. Yes, we did.

Mr. Wallace: I have handed counsel the checks, Your Honor, that were used to distribute.

By Mr. Wallace:

Q. Mr. Hudson, I hand you a list of cancelled checks, together—

The Court (Interposing): A list or a group?

Q. (Continuing): —a group of cancelled checks, all made out on the check form of the American Box Shook Export Association.

Will you look through those checks and tell me if those are the checks that were sent out by your

(Testimony of C. D. Hudson.)

Association to certain of its members on or about May 28, 1941? A. They are.

Q. And to whom were those checks sent?

You want them listed for the record, I take it.

A. And the amounts?

Q. Will you give us the list and the amounts?

A. Western Pine Manufacturing Company, \$989.68. [58]

Ewauna Box Company, \$214.68.

White Lumber & Box Company, \$285.30.

Western Box Distributors, \$1,077.17.

Kesterson Lumber Corporation, \$120.03.

California Pine Box Distributors, \$704.11.

American Box Corporation, \$1,804.27.

New England Box Company, \$800.87.

E. H. Barnes Company, \$498.34.

White Pine Sash Company, \$572.49.

Brewer Pine Box Company, \$492.17.

Q. You have read them all? A. I have.

Q. Attached to the group of checks there is a letter addressed by the American Box Shook Export Association to one of its members. Will you read that letter, please?

A. "May 28, 1941.

"Western Box Distributors,

"403 Monadnock Building,

"San Francisco.

"Gentlemen:

"We are attaching our check for \$1,077.17, covering additional realization on shipments made by

(Testimony of C. D. Hudson.)

your mills between June 1, 1940, and June 1, 1941.

“Our records indicate that during this [59] period your mills shipped 2,154,334 board feet of box shooK, against which shipments the management authorized additional realization to you of \$.50 per thousand board feet.

“Signed: AMERICAN BOX SHOOK EXPORT ASSOCIATION,
By W. A. CLAYTON.”

Q. Did a letter similar to the letter you have in your hand, and which you have just read for the record, go to each of the other members of your Association who received checks? A. Yes.

Q. I noticed that in your list of members given in your testimony a little time ago, you referred also to the Weyerhaeuser Sales Company, and I noticed that none of those checks is made to the Weyerhaeuser Sales Company.

Was a check sent to the Weyerhaeuser Sales Company? A. No.

Q. Why not?

A. They made no shipments during this period.

Q. Did each of the persons or the corporations to whom you sent those checks, have they made agreements with you on the minimum or preliminary basis you have referred to, and made sales to your corporation on that basis prior to the [60] issuance of those checks? A. Yes.

Mr. Murray: Object, if Your Honor please, on the basis that is incompetent, irrelevant and immaterial.

(Testimony of C. D. Hudson.)

The Court: Objection overruled.

Mr. Murray: Exception.

By Mr. Wallace:

Q. Did the letters which went out to the other members all have the same form of calculation?

A. Yes, yes, 50 cents per thousand board feet.

Q. How did you arrive at that sum of 50 cents per thousand board feet?

A. We found we had received additional realization, a total of which represented—rather, the total of which that we felt might be distributed safely without hazard—or without depleting our reserve for additional cost would represent 50 cents a thousand board feet.

Q. Therefore you sent the checks to each of the persons who had made sales during that period?

A. Made shipments during that period.

Mr. Wallace: I should like to introduce the group of checks, Your Honor, and the letter accompanying them.

The Court: As one exhibit?

Mr. Wallace: As one exhibit.

Mr. Murray: No objection. [61]

The Court: Exhibit 2.

(The documents referred to were marked and received in evidence as Petitioner's Exhibit No. 2.)

By Mr. Wallace:

Q. Now, Mr. Hudson, was the same plan of operation to which you have testified, the same ar-

(Testimony of C. D. Hudson.)

arrangement with your members carried on throughout the fiscal year June 1, 1940 to May 31, 1941?

A. Yes.

Q. And have you continued to operate under that plan since? A. We have.

Mr. Wallace: That is all.

Cross-Examination

By Mr. Murray:

Q. Mr. Hudson, are you a stockholder of this American Box Shook Association?

A. No, I am not.

Q. Are you a director? A. No, I am not.

Q. Are you an officer? A. Manager only.

Q. Manager only? A. Yes.

Q. How did it come you were making minutes for the [62] corporation?

A. I think, Mr. Murray, that may have been somewhat irregular. Those minutes should later be approved by the officially elected secretary and president. I think maybe the reason I made out the minutes was that it had been a one-man organization largely from the first, and I have always taken care of such details as that.

Q. Well, the minute dated May 6, 1940, from which you read a paragraph into the record is signed by yourself, but there is no evidence in the minutes that it was approved by anybody. What do you say about that?

A. Well, I would say that we generally have operated perhaps with a minimum of formality and office staff, and since I sent copies of the minutes

(Testimony of C. D. Hudson.)

to everybody concerned and always have sent copies, there apparently has been no objection to that informal method of handling it. I presume, to bring the matter into strictly legal status, we should have those minutes reviewed by whoever was actually the secretary at the time, and have him sign the minutes.

I noticed one set of minutes carries my name as acting secretary. Usually I see my name in there without any title.

Q. Well, then, you felt that you had the authority to draw a minute any time you wanted to, and just send a copy out to the directors? [63]

A. Only based upon actions taken at a regularly called meeting.

Q. Isn't it true that you wrote up some minutes in Washington and sent them out to them at times?

A. Only based upon meetings held.

Q. Held where?

A. Held here, or wherever the minutes state. So far as I know, we have never held a meeting any other place than in San Francisco, as far as I can recall. Frequently I have taken a plane within an hour after a meeting was held, and would be in Washington the next day or two, and we would write the minutes in Washington, based entirely upon a meeting held here.

Mr. Murray: I would like to offer as Respondent's first exhibit the corporation income declared value excess profits and defense tax return, and

(Testimony of C. D. Hudson.)

the corporation excess profits tax return, to which is attached a document, "Treasury Form 1028," called, "Questionnaire with respect to claim for exemption from tax," all of which are bound together here and refer to the fiscal year now before the Court, the fiscal year of the corporation ended May 31, 1941.

Mr. Wallace: May I see it, counsel, please?

The Court: Is there any objection?

Mr. Wallace: No objection, Your Honor.

The Court: Exhibit A. [64]

(The document referred to was marked and received in evidence as Respondent's Exhibit "A".)

Corporate Income Tax

1120 (1-1-41)

UNITED STATES

CORPORATION INCOME, DECLARED VALUE EXCESS-PROFITS, AND DEFENSE TAX RETURN

1940

AUG 1940

For Calendar Year 1940

or fiscal year beginning June 1, 1940, and ended May 31, 1941

No. 37
410041

PRINT PLAINLY CORPORATION'S NAME AND ADDRESS

TOTAL INCOME, DECLARED VALUE EXCESS-PROFITS, AND DEFENSE TAXES

- 37. Total income and income defense taxes (line 35, page 2) \$ 2,114.92
- 38. Less: Credits for income taxes paid to a foreign country or United States possession allowed a domestic corporation. (See instruction 37)
- 39. Balance of income and income defense taxes
- 40. Total declared value excess-profits and declared value excess-profits defense taxes (line 10, page 2)
- 41. Total income, declared value excess-profits, and defense taxes due \$ 2,114.92

We, the undersigned, president (or vice president, or other principal officer) and treasurer (or assistant treasurer, or chief accounting officer) of the corporation for which this return is made, being severally duly sworn, each for himself do hereby swear and say that this return (including any accompanying schedules and statements) has been examined by him and is, to the best of his knowledge and belief, a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the Internal Revenue Code and the regulations issued thereunder.

Subscribed and sworn to before me this 14th day of August, 1941

Walter J. Schimpf (Signature of officer subscribing oath)

NOTARIAL SEAL

CORPORATE SEAL

AFFIDAVIT. (See instruction 3) I/we swear (or affirm) that I/we prepared this return for the person named herein and that the return (including any accompanying schedules and statements) is a true, correct, and complete statement of all the information respecting the tax liability of the person for whom this return has been prepared of which I/we have any knowledge.

Subscribed and sworn to before me this 14th day of August, 1941

Walter J. Schimpf (Signature of person preparing the return)

NOTARIAL SEAL



NOTE—In order that this return may be accepted in meeting the requirements of the Internal Revenue Code, the data called for hereon must be set forth FULLY and CLEARLY.

UNITED STATES
DECLARED VALUE EXCESS-PROFITS, AND DEFENSE 1940
TAX RETURN
 For Calendar Year 1940
 or fiscal year beginning June 1, 1940, and ending May 31, 1941
 PART FULLY ASSOCIATED COMPANIES NAME AND ADDRESS

AMERICAN BOX SHED EXPORT ASSOCIATION
 407 GROCIER BUILDING
 SAN FRANCISCO CALIFORNIA
 Exporting for members under the
 HYPOSPONSORS ACT
 Address of principal office (from box below in Exporting of Lumber products)
 10211344
 9777
 31
 410041

NORMAL-TAX NET INCOME COMPUTATION

Item No.	GROSS INCOME	Less: Revenue and deductions	Net
1. Gross sales (where inventories are not shown) (From Schedule A)			
2. Gross profit from sales			
3. Other profits from sales			
4. Gross receipts (where inventories are not an income-determining factor) (Schedule attached)	50,376.02		
5. Less: Cost of operations (From Schedule B)			
6. Gross profit, where inventories are not an income-determining factor (Schedule attached)			
7. Interest on loans, notes, mortgages, bonds, bank deposits, etc. (See Instruction 17-11)			
8. Other deductions (See Instruction 18)			
9. Net income (See Instruction 19)			
10. Excess profits (See Instruction 10)			
11. Total net short-term capital gain (From Schedule C)			
12. Dividends (From Schedule D)			
13. Other income (From Schedule E)			
14. Total income in lines 9, and 6 to 13, inclusive			
15. Corporation of others (From Schedule F)			
16. Net income (See Instruction 17)			
17. Excess profits (See Instruction 10)			
18. Total income (From Schedule G)	1,652.78		
19. Deductions (See Instruction 21)			
20. Total income (From Schedule H)	214.48		
21. Excess profits (See Instruction 10)			
22. Corporation of others (From Schedule I)			
23. Net income (From Schedule J)			
24. Excess profits (See Instruction 10)			
25. Total income (From Schedule K)	187.86		
26. Deductions (See Instruction 21)			
27. Total income (From Schedule L)	1,676.02		
28. Other income (From Schedule M)			
29. Total deductions in lines 14 to 28, inclusive			
30. Net income (From Schedule N)			
31. Less: Dividends received credit (See Instruction 20)			
32. Adjusted net income			
33. Normal-tax net income	1,333.31		

TOTAL INCOME, DECLARED VALUE EXCESS-PROFITS, AND DEFENSE TAXES

37. Total income and income defense taxes (See 18, page 2)	2,114.92
38. Less: Corporation normal-tax net income (From Instruction 37)	(2,114.92)
39. Balance of income and income defense taxes	
40. Total declared value excess-profits and declared value excess-profits defense taxes (See 15, page 2)	2,114.92
41. Total income, declared value excess-profits, and defense taxes (See 39)	2,114.92

By the undersigned, president (or vice president, or chief executive officer, or chief accounting officer) of the corporation for which this return is made, being a duly sworn, qualified preparer, and aware that this return, including any accompanying schedule or statement, is true, correct, and complete statement of all the information required by the law for which this return has been prepared for the calendar year stated, prepared to the best of his knowledge and belief, and that he is not a partner in the business of the corporation for which this return is made, and that he is not a partner in the business of the corporation for which this return is made.

Subscribed and sworn to before me this 14th day of August 1941

Walter J. Schimpf
 Minister of State Department of the Interior

Subscribed and sworn to before me this 14th day of August 1941

Walter J. Schimpf
 Minister of State Department of the Interior

Subscribed and sworn to before me this 14th day of August 1941

Walter J. Schimpf
 Minister of State Department of the Interior

Schedule E—INCOME FROM DIVIDENDS

1. Name and Address of Paying Corporation		11 Domestic Corporation Name and Address		1 Family Corporation		6 Other Corporate	
Total							

1. Dividend amounts reported from corporations organized under the laws of the United States, Puerto Rico, or any possession thereof are reported in section 1.

Schedule F—COMPENSATION OF OFFICERS

1. Name and Address of Officer		2. Office Title		3. Type of Compensation		4. Amount of Compensation	

Total compensation of officers. (Enter as item 15, page 1).

Notes—Schedules F-1 (IN DUPLICATED) also must be filed with this return if compensation in excess of \$75,000 was paid to any officer or employee.

Schedule G—BAD DEBTS (See Instructions 22) (See note 1)

1. Year(s) Year		2. Bad Debts Reported		3. Basis as Allowed		4. Bad Debt Charge (Of which 50 percent is to be carried over to the next year)		5. Other Assets Added to Reserve		6. Amount Charged Against Reserve	

1. Check whether deduction allowed represents worthless debts charged off (1) or in addition to a reserve (2).

2. Check whether deduction allowed represents worthless debts charged off (1) or in addition to a reserve (2).

Schedule H—TAXES (See Instructions 23)

Name		Amount	
Unemployment taxes		683.18	
Federal Old Age		197.87	
Personal Property - Calif.		29.12	
Personal Property - Wash. D. C.		4.24	
Total. (Enter as item 21, page 1)		814.48	

Schedule J—DEPRECIATION (See Instructions 25)

1. Kind of Property (If building, enter number of building normally)		2. Date Acquired		3. Cost or Other Basis (including land)		4. Depreciation Allowed for Year		5. Total Depreciation Allowed for All Years		6. Remaining Cost at End of Year		7. Estimated Fair Market Value at End of Year		8. Percentage of Basis to be Recovered in Year	
Machinery		3-31-41		97.54		1.97.54		9.754		9.754		1.132.90		10.10	
Furniture & Fixtures		6-31-41		361.42		31.50		1,329.92		1.10		1.10		10.10	
Furniture & Fixtures		1-6-40		739.37		739.37		739.37		1.10		1.10		10.10	
Total. (Enter as item 24, page 1)				2,168.13		2,168.13		2,168.13						167.95	

Schedule K—OTHER DEDUCTIONS (See Instructions 27)

1. Date of Incorporation		March 26, 1940	
2. State or country		California	
3. Business office		Los Angeles	
4. The corporation's books are in care of		Association	

QUESTIONS

1. Did the corporation during the taxable year 50 percent or more of its net income consist of dividends from corporations organized under the laws of the United States, Puerto Rico, or any possession thereof? **No.** (If "yes," enter as item 21, page 1.)
2. Was the corporation a family corporation? **No.** (If "yes," enter as item 21, page 1.)
3. Was the corporation a domestic corporation? **No.** (If "yes," enter as item 21, page 1.)
4. The corporation's books are in care of Association. **No.** (If "yes," enter as item 21, page 1.)
5. Number of shares of business stock owned by the corporation at the beginning of the taxable year? **Two.**
6. Was the corporation a personal holding company during the taxable year? **No.** (If "yes," enter as item 21, page 1.)
7. Is the corporation a personal holding company within the meaning of Section 1361? **No.** (If "yes," enter as item 21, page 1.)
8. Is the corporation a personal holding company within the meaning of Section 1361? **No.** (If "yes," enter as item 21, page 1.)
9. Is the corporation a personal holding company within the meaning of Section 1361? **No.** (If "yes," enter as item 21, page 1.)
10. Is the corporation a personal holding company within the meaning of Section 1361? **No.** (If "yes," enter as item 21, page 1.)
11. Does the corporation make a return of information on Form 1099-DIV for the taxable year 1940? **No.** (If "yes," enter as item 21, page 1.)
12. Did the corporation make a return of information on Form 1099-DIV for the taxable year 1940? **No.** (If "yes," enter as item 21, page 1.)
13. Did the corporation make a return of information on Form 1099-DIV for the taxable year 1940? **No.** (If "yes," enter as item 21, page 1.)
14. Did the corporation make a return of information on Form 1099-DIV for the taxable year 1940? **No.** (If "yes," enter as item 21, page 1.)
15. Did the corporation make a return of information on Form 1099-DIV for the taxable year 1940? **No.** (If "yes," enter as item 21, page 1.)

Schedule 1—BALANCE SHEET, One Month Year

Form 4

Assets	Year	Assets	Year
1. Cash			
2. Notes and accounts payable			
Less: Reserves for bad debts			
3. Inventories (including)		1,021.00	1,021.00
4. Receivables (Government obligations)			
(a) United States			
(b) Investments in the United States			
5. Other investments (including)			
6. Capital assets			
(a) Depreciable assets (including)			
Total depreciable assets			
Less: Reserves for depreciation			
(b) Depletable assets			
Less: Reserves for depletion			
(c) Land			
7. Other assets (including) TRAVEL ADVANCES		9,199.15	9,199.15
Unexpended Insurance			
LIABILITIES			
8. Accounts payable			
(a) With original maturity of less than 1 year			
(b) With original maturity of 1 year or more			
9. STOCKS, BONDS, DEBENTURES, SECURITIES, SAVINGS AND OTHER INVESTMENTS			
10. RESERVE FOR PROFIT AND RESERVE FOR CONTINGENCIES			
11. RESERVE FOR ASSOCIATION AND BONDS			
12. Reserve reserve (including)			
13. Capital debt:			
(a) Preferred stock			
(b) Common stock			
14. Prepaid or unapplied surplus			
15. Earned surplus and undivided profit			
16. TRAVEL ADVANCES			
17. TRAVEL ADVANCES			

Liabilities	Year	Liabilities	Year
1. Total distributions to stockholders deemed to be earned surplus during the taxable year:			
(a) Cash			
(b) Other assets (including 8 percent bonds)			
2. Preferred income taxes			
3. Preferred income taxes			
4. Preferred income taxes paid on tax-exempt bonds			
5. Excess of short-term capital losses over short-term capital gains			
6. Adjustments to surplus reserves (the opportunity):			
(a)			
(b)			
7. Other non-deductible deductions:			
(a)			
(b)			
8. Adjustments not recorded on books (including):			
(a)			
(b)			
(c)			
(d)			
(e)			
(f)			
(g)			
(h)			
(i)			
(j)			
(k)			
(l)			
(m)			
(n)			
(o)			
(p)			
(q)			
(r)			
(s)			
(t)			
(u)			
(v)			
(w)			
(x)			
(y)			
(z)			
Total of lines 1 to 11		4,618.03	4,618.03
Total of lines 12 to 17		9,701.53	9,701.53
Total of lines 1 to 17		13,317.56	13,317.56

Schedule M—RECONCILIATION OF NET INCOME AND ANALYSIS OF EARNED SURPLUS AND UNEXPENDED PROFITS

1. Total distributions to stockholders deemed to be earned surplus during the taxable year:

(a) Cash

(b) Other assets (including 8 percent bonds)

2. Preferred income taxes

3. Preferred income taxes

4. Preferred income taxes paid on tax-exempt bonds

5. Excess of short-term capital losses over short-term capital gains

6. Adjustments to surplus reserves (the opportunity):

(a)

(b)

7. Other non-deductible deductions:

(a)

(b)

8. Adjustments not recorded on books (including):

(a)

(b)

(c)

(d)

(e)

(f)

(g)

(h)

(i)

(j)

(k)

(l)

(m)

(n)

(o)

(p)

(q)

(r)

(s)

(t)

(u)

(v)

(w)

(x)

(y)

(z)

Total of lines 1 to 11

Total of lines 12 to 17

Total of lines 1 to 17

18. Excess profits not taxable (the product of distributing surplus for filing returns) (line 6 minus line 17)

Schedule N—EXCESS PROFITS NET INCOME COMPUTATION

1. Normal-tax net income (line 24, page 1)		3,331.46	3,331.46
2. 80 percent of income on borrowed capital			
3. Net short-term capital loss (line 11 (d), page 1)			
4. Total of lines 1 to 3		3,331.46	3,331.46

4. Dividends received with adjustment (line 1, page 1)

5. Dividends received (including corporate dividends and 8 percent bonds (line 10, page 1))

6. Total of lines 4 and 5

7. Total long-term capital gain (line 11 (e), page 1)

8. Total of lines 6 and 7

9. Property held more than 12 months

10. Excess of line 8 over line 9

11. Net income (including net capital gain)

12. Net income (including net capital gain)

13. Net income (including net capital gain)

14. Net income (including net capital gain)

15. Net income (including net capital gain)

16. Net income (including net capital gain)

17. Net income (including net capital gain)

18. Net income (including net capital gain)

19. Net income (including net capital gain)

20. Net income (including net capital gain)

21. Net income (including net capital gain)

22. Net income (including net capital gain)

23. Net income (including net capital gain)

24. Net income (including net capital gain)

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28. Net income (including net capital gain)

29. Net income (including net capital gain)

30. Net income (including net capital gain)

31. Net income (including net capital gain)

32. Net income (including net capital gain)

33. Net income (including net capital gain)

34. Net income (including net capital gain)

35. Net income (including net capital gain)

36. Net income (including net capital gain)

37. Net income (including net capital gain)

38. Net income (including net capital gain)

39. Net income (including net capital gain)

40. Net income (including net capital gain)

41. Net income (including net capital gain)

42. Net income (including net capital gain)

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45. Net income (including net capital gain)

46. Net income (including net capital gain)

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49. Net income (including net capital gain)

50. Net income (including net capital gain)

51. Net income (including net capital gain)

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55. Net income (including net capital gain)

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90. Net income (including net capital gain)

91. Net income (including net capital gain)

92. Net income (including net capital gain)

93. Net income (including net capital gain)

94. Net income (including net capital gain)

95. Net income (including net capital gain)

96. Net income (including net capital gain)

97. Net income (including net capital gain)

98. Net income (including net capital gain)

99. Net income (including net capital gain)

100. Net income (including net capital gain)

(Testimony of C. D. Hudson.)

Respondent's Exhibit A—(Continued)
 American Box Shook Export Association
 Tax Return—Year Ended May 31, 1941

Gross Profit:

Commissions earned	\$40,214.78
Discounts earned	10,362.04
	<hr/>
	\$50,576.82
	<hr/>

Other Deductions:

Postage	\$ 361.61
Stationery and office supplies.....	450.90
Telegraph	4,606.20
Printing blocks	57.83
Telephone	1,836.95
Miscellaneous expenses	644.92
Travel expense	2,729.40
Legal and accounting	997.01
National Wooden Box Association— Services	3,100.00
	<hr/>
	\$14,784.82
	<hr/>

Form 1028. Treasury Department, Internal Revenue Service. Rev. March, 1936.

QUESTIONNAIRE

For Farmers', Fruit Growers', or Like Association Claiming Exemption Under Section 101 (12) of the Revenue Act of 1936.

(Testimony of C. D. Hudson.)

Respondent's Exhibit A—(Continued)

State of California

County of San Francisco—ss.

William A. Clayton, deposes and says that he is the Assistant Secretary of the American Box Shook Export Association located at 407 Crocker Building, San Francisco, California, and that the following answers and statements relative to the year ended May 31, 1941, are true to the best of his knowledge and belief:

1. Date association was organized: March 26, 1940.

2. Purpose for which organized: Exporting for members under the Webb-Pomerene Act.

3. Is the association incorporated? Yes. If so, state: (a) Date incorporated, March 26, 1940; (b) under the laws of what State? California.

4. State the amount of each class of capital stock outstanding and the value of the consideration for which it was issued: Capital stock authorized 50 shares par value \$500 per share, none outstanding until June 1, 1940. (a) State the rate of dividend paid on each class of such capital stock; No dividends.

*5. State the amount of each class of capital stock owned by: (a) Producers: All. (b) Nonproducers: None. (c) Persons who were nonproducers at the time stock was acquired: None.

*6. State the circumstances surrounding the acquisition of your capital stock by nonproducers: Not applicable. (a) What provision is made for retiring

(Testimony of C. D. Hudson.)

Respondent's Exhibit A—(Continued)

the capital stock held by nonproducers: Not applicable.

7. If the association issues any nonvoting preferred stock, explain whether the owners thereof may participate in the profits of the association, upon dissolution or otherwise, beyond the fixed dividends: Not applicable.

8. What is the legal rate of interest in the State in which the association is incorporated? Seven.

9. Does the State law require the maintenance of a reserve? No. If so, state the amount of such reserve. \$

10. Does the association maintain any reserve or reserves other than required by the State law? No. If so, state: (a) Amount of each reserve: None. (b) Purpose for which each reserve is maintained: None maintained.

11. What are the requirements for membership in the association? By-laws Article I, Sec. 2: "New shareholders shall become so only upon application and approval by two thirds of the then shareholders of the corporation and upon purchasing one share of stock at the price fixed by two-thirds of the shareholders at the time of such approval but at not less than par."

* The information called for in Questions 5 and 6 above need not be supplied with respect to nonvoting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the association, upon dissolution or otherwise, beyond the fixed dividends.

(Testimony of C. D. Hudson.)

Respondent's Exhibit A—(Continued)

12. Does the association deal with both members and non-members? Not with non-members.

13. State the value of products marketed during the year for: (a) Members. No operations until June 1, 1940, \$ None. (b) Nonmembers, \$ None.

14. State the value of purchases made during the year for: (a) Members, \$ None. (b) Nonmembers, \$ None.

15. State the value of purchases made during the year for persons who are neither members nor producers. (Do not include this amount in Item 14(b)): \$ None.

16. State fully the manner in which distribution is made of the proceeds of products marketed for: (a) Members: It is intended that a preliminary billing price be settled monthly with the understanding that any excess received from the sale of shook over expenses would, upon action of the organization, be subject to distribution as additional realization on shipments made during the period when such excess was accumulated. (b) Non-members: No transactions.

17. State fully the plan followed in charging for supplies and equipment purchased for: (a) Members: None. (b) Nonmembers: None.

18. Does the association pay patronage dividends? No. If so, explain how such dividends are participated in by: (a) Members. (b) Non-members

(Testimony of C. D. Hudson.)

Respondent's Exhibit A—(Continued)

19. Is the information contained herein representative of the purposes and activities of the association since January 1, 1925, or date of organization, if organized subsequent to that date? Yes. If not, state the changes that have occurred and dates of such changes.....

20. Has the association filed income tax returns? Yes. If so, what year or years? Period from incorporation March 26, 1940, to May 31, 1940, date of beginning business.

The attached financial statements showing the assets and liabilities of the association as at the close of the year covered by this questionnaire and a classified list of the receipts and disbursements during the same year are hereby specifically made a part of this questionnaire.

W. A. CLAYTON

(Signature of a principal officer)

Subscribed and sworn to before me this 14th day of August, 1934.

[Illegible]

Notary Public in and for the City and County of San Francisco, State of California.

Attach:

Financial statements.

Articles of incorporation and by-laws.

[Stamp on face of Questionnaire]: Prepared by Rollin Rodolph & Co., Certified Public Accountants.

1940 RETURN

OF CAPITAL-STOCK TAX For Year Ending June 30, 1940 DOMESTIC CORPORATIONS

(Chapter 6, Internal Revenue Code, as amended)

This return must be filed, in triplicate, and received with remittance by the Collector for your district on or before July 31, 1940. (See instruction 20, page 10.)

Form 707
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

To be stamped above by Collector showing district and date received

Name **American Box Shock Export Association**

Address **306 Barr Bldg., Washington D.C. - 401 Crocker Building, S.F., Calif.**

Incorporated or organized in State of **California** Month **March** Day **28** Year **1940**

Was a 1939 capital-stock tax return filed? **No** Name under which filed. (If different, attach statement explaining fully.)

Date of close of last income-tax year ended prior to July 1, 1940 **None (next 5-31-41)** Was an income-tax return filed for that year? Name under which filed

If the corporation is newly organized and has not established an income-tax year, state date of organization **March 28, 1940**

Nature of business in detail **Exporting for members under the Webb-Pomeroy Act**

Name of parent company, if any

Name of subsidiary, if any

DECLARED VALUE OF CAPITAL STOCK

Corporations enumerated in instruction 10 on page 10 must report a definite and unqualified declared value in this block. (See also instructions 11 to 13.) (Do not use this block for elective deferral year—see block 10 below.)

TAX DIVISION
AMOUNT SECTION
3,350,000.00
2477

ADJUSTED VALUE—ELECTIVE DECLARED VALUE

Corporations described in instruction 5 on page 9 MUST complete Schedules I and II and enter the adjusted value (last item in Schedule I) in Part A of this block. Any corporation of this class may elect to declare, and pay tax on, a value in excess of the adjusted value. If such election is made, definite and unqualified value MUST be entered in Part B of this block. (See instructions 14 and 15.)

PART A
ADJUSTED VALUE
OF CAPITAL STOCK
(Last item of Schedule I, page 2)

PART B
ELECTIVE DECLARED
VALUE OF
CAPITAL STOCK
(If elective declared value must be reported, declare value declared by Schedule I)

EXEMPTIONS.—The law provides for exemption from the tax only on the grounds indicated below. Corporations claiming exemption must (1) complete block 9 or 10 above whichever is applicable, (2) check the appropriate block below, and (3) submit with the return the evidence specified under the block checked.

- Corporation exempt from income tax under section 101, Internal Revenue Code. Furnish information required by instruction 11.
- Insurance company subject to tax under section 201, 204, or 207, Internal Revenue Code. State which section.
- Corporation not doing business. Furnish information required by instruction 19.

COMPUTATION OF TAX	FOR USE OF TAXPAYER	FOR USE OF DEPARTMENT
Taxable value reported in item 9 or 10	\$ 350,000.00	\$
Tax at rate of 31 for each full \$1,000 in item 12 (omit cents)	Exemption claimed	
Penalty of _____ percent for delinquency in filing return		
Interest at 6 percent per annum		
Total tax, penalty, and interest	None	

DUPLICATE

**UNITED STATES
CORPORATION EXCESS PROFITS TAX RETURN
For Calendar Year 1940**

1940

File No. **31**
 Ident. No. **400007**
 District **1 - Calif.**
 Date **APR 15 1941**
 No. **39477**

or fiscal year beginning June 1, 1940, and ended May 31, 1941

PLANT PLAINLY CORPORATION'S NAME AND ADDRESS

AMERICAN BOX SHOOK EXPORT ASSOCIATION
407 GROCKER BUILDING
SAN FRANCISCO CALIFORNIA

- 28. Portion of item 23 (in excess of \$250,000 and not in excess of \$500,000); and tax at 45 percent
- 29. Portion of item 23 (in excess of \$500,000); and tax at 50 percent
- 30. Excess profits tax (total tax in column 3 of items 24, 25, 26, 27, 28, and 29). (In case of certain exchanges to which section 710 (a)(2) is applicable, attach schedule showing computation under that section and enter the excess profits tax so computed as item 30)
- 31. Amount, if any, due to application of section 734. (Attach schedule; see Instruction XII)
- 32. Total excess profits tax (line 30 plus line 31)
- 33. Less: Credit for income taxes paid to a foreign country or United States possession allowed a domestic corporation not used in computing item 28, page 1, Form 1120
- 34. Balance of excess profits tax due

1,296.46
 1,296.46
 1,296.46

We, the undersigned, president (or vice president, or other principal officer) and treasurer (or assistant treasurer, or chief accounting officer) of the corporation for which this return is made, being severally duly sworn, each for himself, depose and say that this return (including any accompanying schedule, who and statements) has been examined by him and is, to the best of his knowledge and belief, a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the Internal Revenue Code and the regulations issued thereunder.

Subscribed and sworn to before me this 15th day of April, 1941

Matilda J. Schinck
 (Signature of President, Treasurer or Chief Accounting Officer)
 CORPORATE SEAL

I've sworn (or affirm) that I've prepared this return for the person named herein and that the return (including any accompanying schedule and statements) is a true, correct, and complete statement of all the information respecting the excess profits tax liability of the person for whom this return has been prepared of which I've have any knowledge.

Subscribed and sworn to before me this 15th day of April, 1941

Leahnie C. Dawson
 (Signature of person preparing the return)
 CORPORATE SEAL

NOTE—No other filing this return may be accepted in compliance with the requirements of the Internal Revenue Code, the rules called for herein and for each POLY and CLERK.

1940

UNITED STATES CORPORATION EXCESS PROFITS TAX RETURN
For Calendar Year 1940
 of fiscal year beginning June 3, 1940, and ended May 27, 1941.

Date 3/1
 No. 400007
 Filed 1-30-41
 Recd. 394 72
 AUG 15 1941
 FEDERAL BUREAU OF INVESTIGATION
 402 CROCKER BUILDING
 SAN FRANCISCO
 CALIFORNIA

NAME OF CORPORATION AND ADDRESS: **AMERICAN BOX SHOE EXPORT ASSOCIATION**
402 CROCKER BUILDING
SAN FRANCISCO, CALIFORNIA

Business year used: same as fiscal year

(1) State or country: California

(2) Calendar year for which your return for the taxable year was filed: First California

(3) Date of incorporation: March 24, 1940

(4) Calendar's office in which your return is made for the taxable year was filed: First California

(5) Is this a new corporation? No. If so, prevent from the collector Form 812, Additional Schedules, which shall be filed in return by, and be completed by, you.

(6) In computing the excess profits credit under the invested capital method, do you elect to include in excess profits and income interest received on preferred stock owned by you or any other person? No.

(7) Do you elect to include in excess profits and income interest received on preferred stock owned by you or any other person? No.

(8) Do you elect to include in excess profits and income interest received on preferred stock owned by you or any other person? No.

(9) Do you elect to include in excess profits and income interest received on preferred stock owned by you or any other person? No.

(10) Do you elect to include in excess profits and income interest received on preferred stock owned by you or any other person? No.

(11) Do you elect to include in excess profits and income interest received on preferred stock owned by you or any other person? No.

(12) Do you elect to include in excess profits and income interest received on preferred stock owned by you or any other person? No.

SPECIFIC DISCLAIMER

(Unless you specifically elect in 1) or 1b) below either the credit computed under the income method or the credit computed under the invested capital method, it is mandatory that Schedule A and B and Subsections A and B be completed under this form and be submitted as a return. [The language in Subsections A and B is subject to change without notice. See Regulations thereunder.]

(1) Do you elect the use of the credit computed under section 718—the income method? No.

(2) Do you elect the use of the credit computed under section 714—the invested capital method? No.

IF YOU HAVE NOT DISCLAIMED ONE METHOD, SCHEDULES I, II, A, AND B MUST BE COMPLETED.

EXCESS PROFITS NET INCOME COMPUTATION. (See Instruction III.)

1. Normalized net income (Item 26, page 1, Form 1139)	1,13,317 50
2. Add: Total long-term capital losses (Item 11 (b), page 1, Form 1139)	
3. Total of items 1 and 2	1,13,317 50
4. Less: Income and income deferral items (Item 39, page 1, Form 1139)	2,114 02
5. Net long-term capital GAIN (Item 11 (b), page 1, Form 1139)	550
6. Net GAIN from sale or exchange of depreciable property held more than 18 months	
7. Income from treatment or discharge of bonds, etc.	
8. Individual and fiduciary income	
9. Dividends received credit adjustment (Total of columns 2 and 4, Schedule B, Form 1139, minus item 35, page 1, Form 1139)	
10. Abnormal income attributable to other years. (Attach statement; see Instruction VIII.)	
11. Total of items 4 to 10	
12. Excess profits net income (Total of items 3 and 11) minus item 13	

SCHEDULE II EXCESS PROFITS CREDIT BASED ON INVENTED CAPITAL

14. Amount of item 12	2,114 02
15. Add: 50 percent of interest on borrowed capital	11,202 74
16. Interest on government obligations. (See Question (c) above for election)	
17. Total of items 14 to 16	11,202 74
18. Dividends received credit adjustment (Total of column 2, Schedule B, Form 1139, exceeding dividends received or included in item 12 less the amount of the credit computed under the invested capital method) (Item 17, minus item 15)	
19. Excess profits net income (Total of items 14 to 17) minus item 18	11,202 74

EXCESS PROFITS TAX COMPUTATION

20. Excess profits net income (Item 12 or item 19, whichever is applicable)	11,202 74	Column 1
21. Less: Specific exemption	0	Column 2
22. Excess profits credit	1,400 00	(3)
23. Total of items 20 and 22	9,802 74	
24. Adjusted excess profits net income (Item 20 minus the sum of items 21 and 22)	9,802 74	
25. Portion of item 24 (in excess of \$50,000); and tax at 20 percent	6,016 90	
26. Portion of item 24 (in excess of \$25,000 and not in excess of \$50,000); and tax at 30 percent	5,185 84	
27. Portion of item 24 (in excess of \$100,000 and not in excess of \$250,000); and tax at 40 percent	5,185 84	
28. Portion of item 24 (in excess of \$250,000 and not in excess of \$500,000); and tax at 45 percent		
29. Excess profits tax (Total tax in column 2 of items 25, 26, 27, 28, and 29). (In case of certain excess profits tax which are computed on item 20, attach schedule showing allocation of that amount and enter the excess profits tax as computed on item 20.)	1,296 48	
30. Less: Income tax liability or United States possession allowed a domestic corporation not used in computing item 20, page 1, Form 1139	1,296 48	
31. Amount, if any, due to application of section 724. (Attach schedule; see Instruction XII.)		
32. Total excess profits tax (line 30 plus line 31)	1,296 48	
33. Less: Excess profits tax paid in prior years	1,296 48	
34. Balance of excess profits tax due	1,296 48	

By the undersigned, president (or vice president, or other principal officer) and treasurer (or assistant treasurer) or other person authorized to sign this return, and duly sworn, that this return, including any accompanying schedule or statement, is a true and correct statement of the facts required to be ascertained and reported thereon, and that the corporation has not been organized for the purpose of obtaining tax benefits under this return. (The language in this section shall, pursuant to this Internal Revenue Code, be the governing instrument in all proceedings relating to this return.)

Matthias Schmitt President

(Signature of person preparing this return)

Elizabeth Danneberg Treasurer

(Signature of person preparing this return)

Preparer's name: Matthias Schmitt (Signature)

Address: 1120 G St., San Francisco 14, Calif.

1940-10-19-11 (Use only for reporting on Form 1139, United States possession allowed a domestic corporation)



Schedule A—EXCESS PROFITS CREDIT—BASED ON INCOME. (See Instructions 10)

TABLE FROM INSTRUCTIONS (SEE INSTRUCTIONS 10, 11, 12) (SEE INSTRUCTIONS 10, 11, 12)

TABLE FROM INSTRUCTIONS (SEE INSTRUCTIONS 10, 11, 12) (SEE INSTRUCTIONS 10, 11, 12)

1. Money paid in for stock, or as public surplus, or as a contribution to capital									
2. Property paid in for stock, or as public surplus, or as a contribution to capital									
3. Amortized earnings and undistributed profits to stock of the corporation									
4. Increase on account of gain on tax-free liquidation									
5. Total of lines 1 to 4									
6. Dividends made prior to the taxable year out of accumulated earnings and profits									
7. Reduction on account of gain on tax-free liquidation (see instructions)									
8. Total of lines 5 to 7									
9. Excess profits credit based on income (see instructions)									
10. Total of lines 8 and 9									
11. Excess profits credit based on income (see instructions)									
12. Total of lines 10 and 11									
13. Excess profits credit based on income (see instructions)									
14. Total of lines 12 and 13									
15. Excess profits credit based on income (see instructions)									
16. Total of lines 14 and 15									
17. Excess profits credit based on income (see instructions)									
18. Total of lines 16 and 17									
19. Excess profits credit based on income (see instructions)									
20. Total of lines 18 and 19									
21. Excess profits credit based on income (see instructions)									
22. Total of lines 20 and 21									
23. Excess profits credit based on income (see instructions)									
24. Total of lines 22 and 23									
25. Excess profits credit based on income (see instructions)									
26. Total of lines 24 and 25									
27. Excess profits credit based on income (see instructions)									
28. Total of lines 26 and 27									
29. Excess profits credit based on income (see instructions)									
30. Total of lines 28 and 29									
31. Excess profits credit based on income (see instructions)									
32. Total of lines 30 and 31									
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48. Total of lines 46 and 47									
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65. Excess profits credit based on income (see instructions)									
66. Total of lines 64 and 65									
67. Excess profits credit based on income (see instructions)									
68. Total of lines 66 and 67									
69. Excess profits credit based on income (see instructions)									
70. Total of lines 68 and 69									

Schedule B—EXCESS PROFITS CREDIT—BASED ON INVESTED CAPITAL (See Instructions VII)

1. Money paid in for stock, or as public surplus, or as a contribution to capital									
2. Property paid in for stock, or as public surplus, or as a contribution to capital									
3. Amortized earnings and undistributed profits to stock of the corporation									
4. Increase on account of gain on tax-free liquidation									
5. Total of lines 1 to 4									
6. Dividends made prior to the taxable year out of accumulated earnings and profits									
7. Reduction on account of gain on tax-free liquidation (see instructions)									
8. Total of lines 5 to 7									
9. Excess profits credit based on income (see instructions)									
10. Total of lines 8 and 9									
11. Excess profits credit based on income (see instructions)									
12. Total of lines 10 and 11									
13. Excess profits credit based on income (see instructions)									
14. Total of lines 12 and 13									
15. Excess profits credit based on income (see instructions)									
16. Total of lines 14 and 15									
17. Excess profits credit based on income (see instructions)									
18. Total of lines 16 and 17									
19. Excess profits credit based on income (see instructions)									
20. Total of lines 18 and 19									
21. Excess profits credit based on income (see instructions)									
22. Total of lines 20 and 21									
23. Excess profits credit based on income (see instructions)									
24. Total of lines 22 and 23									
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66. Total of lines 64 and 65									
67. Excess profits credit based on income (see instructions)									
68. Total of lines 66 and 67									
69. Excess profits credit based on income (see instructions)									
70. Total of lines 68 and 69									

(Testimony of C. D. Hudson.)

Respondent's Exhibit A—(Continued)

Office of The Collector, First District of California.

In replying refer to Serial No. Aug. 400007-F. Y. '41 (6-2-40 - 5-31-41)

Treasury Department, Internal Revenue Service,
Federal Office Building, San Francisco, California. Aug. 26, 1941.

(Stamp]: Received Aug. 27, 1941. By.....
American Box Shook Export Association,
407 Crocker Bldg., San Francisco, Calif.

An examination of your income tax return for the taxable fiscal year 1940 discloses that the affidavit not properly executed.

You are requested to return this letter within 10 days from the date hereof with the affidavit is not properly executed.

Respectfully,

CLIFFORD C. ANGLIM,
Collector.

Title of second officer signing omitted. Signature should be that of Treas. or Asst. Treas. or CAO.

AFFIDAVIT

We, the undersigned, president (or vice president, or other principal officer) and treasurer (or assistant treasurer, or chief accounting officer) of the corporation for which this return is made, being severally duly sworn, each for himself deposes and says that this return (including any accompanying schedules and statements) has been examined by him and is, to the best of his knowledge and belief, a true, correct and complete return, made in good

(Testimony of C. D. Hudson.)

Respondent's Exhibit A—(Continued)
 faith, for the taxable year stated, pursuant to the
 Internal Revenue Code and the regulations issued
 thereunder.

(Corporate Seal)

J. WALTER RODGERS,

President

J. F. O'BRIEN,

Treasurer

Subscribed and sworn to before me this 29th day
 of August, 1941.

(Notarial Seal)

MATILDA J. SCHIMPF,

Notary Public in and for the City and County of
 San Francisco, State of California.

My Commission expires Dec. 23, 2944.

Audit Section, Room 250

“Audit Form O”

By Mr. Murray:

Q. Mr. Hudson, did you have anything to do
 with the making of the federal tax returns of the
 American Box Shook Export Association for the
 fiscal year ended May 31, '41?

A. Well, may I see that return, just to refresh
 my memory?

Q. Yes. (Handing).

A. Well, I think this much connects with it. I
 had gone over the annual statement with the ac-
 countants, and I believe had been given a prelimin-

(Testimony of C. D. Hudson.)

ary copy of the return, and no doubt understood exactly what the return would be before it was submitted.

Q. And that, I take it, refers to the questionnaire attached to the return as well. I notice that is signed by Mr. W. A. Clayton.

A. Yes. Mr. Clayton was the manager of the San Francisco office, and I believe serving as assistant secretary. I am not sure that I saw this questionnaire before it was turned in, but I am certain that I was in touch with Mr. Clayton, and that if there was any question involving policy, or involved in this, that perhaps he discussed it with me at the time. My name doesn't appear on this, because this was handled here in San Francisco, and I was doubtless in Washington at the time.

Q. Well, on Page 3 of the questionnaire, attached to the returns, is the following statement, in answer to a question numbered 16 on the questionnaire.

The quote is as follows:

“It is intended that a preliminary price be settled monthly with the understanding that any excess received from the sale of shook over expenses would, upon action of the organization, be subject to distribution as additional realization on shipments made during the period when such excess was accumulated.”

I ask you, assuming you know, whether action was taken by this taxpayer organization in connection with all distributions made by the corporation?

(Testimony of C. D. Hudson.)

A. Yes. I would say that the word "action" may or may not be as definite as you have in mind.

The directors discussed the realization over a given period. Naturally there was a feeling there should be held back a cushion, or you might say a small revolving fund to take care of contingencies, and so it was just a matter of judgment as to whether we could safely distribute 50 cents or 75 cents or \$1 a thousand additional in view of the returns to date, and that phrase there, "upon action of the organization," referred to that policy, that it would be a matter of judgment to be determined by the directors as to how much of the additional realization might safely at that [66] moment be paid against shipments.

Q. Well, then, it was necessary, and that necessity was recognized in connection with every distribution, that the directors act in accordance with it, is that right?

A. That the directors more or less approve the distribution.

Q. Well, they had to approve it before it was made, of course?

A. That's right.

Q. And that was necessary to their plan?

A. Well, the phrase occurs in there, "upon action of the organization." It occurs in the minutes, I believe, of July, that we read, and in that statement carried on the questionnaire, that phrase occurs, and I am sure that was understood to mean that the directors should approve of any additional realization, merely because it was a matter of judg-

(Testimony of C. D. Hudson.)

ment as to whether there were still some delayed liabilities which might dissipate some of that additional realization later.

Q. The taxpayer corporation here, I believe you stated, existed for several years as an unincorporated organization? A. That's right.

Q. Was it exactly the same name?

A. The same name exactly.

Q. I would like to ask you if you know whether this [67] minute of May 6, 1940, a part of which you read into the record a while ago, referred to the unincorporated or the incorporated Association?

A. That motion that I read very definitely referred to the by-laws of the corporation that was then being formed and set up.

Q. But then you hadn't had any meetings—there wasn't any board of directors, or anything, of the corporation at that time, apparently, is that right?

A. Yes, the corporation was in process. We had secured a California license, I believe in March of that year, and the directors were meeting as directors of the corporation. Our fiscal year did not start until June of that year, but necessarily there were meetings prior to that, and we were transacting business as directors—they were, rather.

Q. Are you presently familiar with the application for the permit to issue shares of capital stock, and the articles of incorporation and the by-laws of this taxpayer Association?

(Testimony of C. D. Hudson.)

A. Well, I have read them all through. I haven't refreshed my memory on them in recent months.

Mr. Murray: I understand, if Your Honor please, that counsel for the Petitioner will stipulate that the articles of incorporation and the by-laws say nothing about distributions of any kind to the members. They are silent on it. It is by his wishes that they are not being placed in. [68]

Mr. Wallace: Well, counsel, if you want the articles and the by-laws, I don't want to raise any objection. I suggest that they are quite long, and it will create an extensive record, but I have no objection if you want them in.

Mr. Murray: I have no objection to not having them in, if you admit those facts.

Mr. Wallace: Except as the by-laws may have been amended. There certainly is nothing in the original by-laws with respect of distribution.

Mr. Murray: Are there any amendments?

Mr. Wallace: You have just heard the witness read one.

Mr. Murray: He speaks of an amendment to the by-laws, not to the article.

Mr. Wallace: There are no amendments so far as I know, to the articles of incorporation.

Mr. Murray: Well, then, I will ask the witness:
By Mr. Murray:

Q. Do you know of any amendments that were actually made to the by-laws of this incorporation?

(Testimony of C. D. Hudson.)

A. No, I don't know of any. The motion so recorded there, amending the by-laws to provide for payment of this additional realization on dollar value, that amendment was never actually put into the by-laws. [69]

Q. Mr. Hudson, do I understand correctly that the basis for distribution is the number of board feet that each stockholder furnished to these shipments during the year, irrespective of what shipments his particular merchandise went into?

Mr. Wallace: May I have the question, please?

(Question read by Reporter.)

Mr. Murray: I would like to correct that. Irrespective of which particular shipment his particular board feet went into.

Mr. Wallace: That is not quite clear to me. It may be to the witness.

The Witness: I will answer, yes, with the understanding that you are asking me whether the distribution was against total footage shipped, rather than by some segregation of shipments, or may I illustrate that, over a given period—included in the year in question, we made shipments possibly to United Kingdom, to Ireland, to South Africa, and perhaps to the Persian Gulf. Those shipments were all totalled, and the distribution was against the total shipments prorated according to that part shipped by each member, so there was no classification of, say, butter boxes versus orange boxes. The distribution was on a prorata basis against all of them.

(Testimony of C. D. Hudson.)

Q. It is not true that also there was no attempt made [70] to identify the shook furnished by one stockholder with the particular shipment which that shook went out of the country in? I mean, did you attempt to identify anybody's products, following it through from the time you took it until the time you sold it, and then reimburse him on that basis? Did you do that?

A. We have always asked the mills to identify their shook by route, putting a mark as the shook goes through a re-saw. It isn't always practical, however, and while theoretically we hoped we could always identify, actually it was not always possible.

Q. Were you generally familiar with the application for the permit to issue shares of capital stock which was made of the Division of Corporations, Department of Investment of the State of California, just prior to the issuance of the stock of this company here in question?

A. Those matters were handled by Mr. Slack, our counsel here in San Francisco, and I was probably as familiar with the matter as any client would be with his counsel.

Q. I show you what purports to be a copy of that application, and ask you to look at sub-paragraph (d), and see if you are familiar with that, if you know about that. (Handing).

A. I am familiar with that, yes, sir.

Q. And the sub-division that you are looking at is the way you understand it, is that right? [71]

A. That's right.

(Testimony of C. D. Hudson.)

Mr. Wallace: I will stipulate, counsel, that that is an accurate copy, and you may read any part of it that you desire into the record.

Mr. Murray: The witness has said that is the way he understands it, though.

The Witness: Yes.

Mr. Murray: And I would like to read this subparagraph from the application just mentioned, which reads as follows:

“Applicant proposes to transact business by purchasing box shook exclusive for export, and will not engage in the manufacture or sale of any commodity in domestic commerce.”

By Mr. Murray:

Q. Mr. Hudson, I understand that you were manager and had a lot to do with the unincorporated Association, and then afterwards the incorporated Association? A. That's right.

Q. Could you tell why the Association was incorporated?

A. We started out originally as a fact-finding organization in 1935. We charged dues. Each member paid \$15 a month. Under that arrangement we were to return to members information as to export markets. We made surveys of markets in 25 or 30 countries. We thought at that time our only activity would be to place information which would lead to export sales [72] by the individual manufacturers. It developed, however, that plan was not entirely practical or worthwhile, and we would

(Testimony of C. D. Hudson.)

of necessity have to go into business as a trading organization. The member mills didn't want to set up within each organization an export department, and it was apparent that we would have to serve as that export department, and so we got into business. It was also very apparent that a loosely formed, unincorporated group was not in position to handle business and to deal with banks and to arrange credits, and so a natural sequence was that we took action to incorporate. At the same time we did take in some additional members, expanding the scope of the organization.

Q. Well, then, is it a truthful statement to say that you incorporated so as to get the advantages of a corporation?

A. We incorporated, you might say, to get the advantages and yet, in order——

Mr. Wallace (Interposing): If Your Honor please, I think counsel should list the advantages first before he asks the general question.

The Witness: We found there were some disadvantages, too.

Mr. Wallace: I will withdraw the objection, counsel; it is all right. Counsel has suggested that we stipulate that this corporation was not formed under the California laws with respect of non-profit co-operative organizations, [73] and it was not so formed. It was formed under the regular California corporate statutes without reference to a non-profit organization.

Mr. Murray: That is the stipulation that I

(Testimony of C. D. Hudson.)

wanted, and I think that is all, if you Honor please, with this witness.

Redirect Examination

By Mr. Wallace:

Q. Mr. Hudson, you made counsel for the government ask you a question or two with respect of the various footages sold by the various corporations that entered into the distribution of the funds.

I call your attention to the report of the minutes of June 9, 1941, and call your attention to the second page. There is a list there of the various members, with various footages and percentages after their names.

Are those the percentages, first the footage of lumber sold by each of your member corporations, and then the percentage of the total?

A. This list represents all shipments for the fiscal year ending May 31st, and after each member's name appears the total footage shipped during the year, and the percentage of that footage as to the entire total.

Mr. Wallace: With counsel's and the Court's permission, I will just hand this long list to the Reporter, and [74] ask her if she will write that into the record. Then you will have it accurately.

If we may just pass this a moment, Your Honor, I will see if we have a copy of the entire minute.

Counsel for the government suggests it all go in, and if we can find a copy, we will put the duplicate in.

(Testimony of C. D. Hudson.)

By Mr. Wallace:

Q. Mr. Hudson, in answer to one of the questions propounded by Mr. Murray, you called yourself a one-man organization. What do you mean by that?

A. Well, the duties of keeping the minutes, making the sales and collections and paying the bills, all seemed to fall upon me at that time. Later we did expand it, and I should give credit to my associates, but in the first place, the organization was more or less conceived by me, and I contacted members of the industry, and induced them to come in, and during those subsequent years I handled all the details.

Q. What about the year in question, '40-'41?

A. The year in question, we had a larger volume, and had an office here as well as in Washington, and while we had very competent help here in San Francisco, it was natural that I should continue to handle perhaps many of the details which might have well been dropped by me, but I did continue to handle, such as taking care of the minutes, and I am still consequently in touch with all the details. [75]

Q. With reference to the minute book and to the various minutes that were read, counsel asked you as to how those came to be prepared. I want to ask you whether the minutes contained in this book to which reference has been made accurately reflect the transactions held at the meetings of the board of directors of the American Box Shook Export Association? A. They do.

(Testimony of C. D. Hudson.)

Q. And when you wrote up the minutes you were writing up the minutes after a meeting had been held for the purpose of recording what had been done at that meeting?

A. That's right, and the minutes in all instances named exactly those who were present, and none others.

Mr. Wallace: If Your Honor please, I have found an additional copy of the minutes of the meeting of June 9, 1941, which the witness has identified a moment ago, and which I would like to put into evidence as the Petitioner's Exhibit 3.

Mr. Murray: No objection.

The Court: Exhibit 3.

(The document referred to was marked and received in evidence as Petitioner's Exhibit No. 3.)

PETITIONER'S EXHIBIT No. 3

American Box Shook Export Association

Barr Building, Washington, D. C.

Crocker Building, San Francisco, Calif.

MINUTES OF ADJOURNED ANNUAL MEETING OF STOCKHOLDERS OF THE AMERICAN BOX SHOOK EXPORT ASSOCIATION

Held at office of Western Box Distributors, Monadnock Building, San Francisco, June 9, 1941—1:00 p.m. (adjourned from June 2, 1941.)

(Testimony of C. D. Hudson.)

Present:

Stockholders	Representative
American Box Corporation.....	Albert Pearlman
Calif. Pine Box Distributors.....	J. F. O'Brien and A. W. Pinger
Dwight Lumber & Box Co.....	W. A. Dwight
Western Box Distributors	J. W. Rodgers
Western Pine Mfg. Co. Ltd.....	Grant Dixon
Ewauna Box Company	C. W. Hornibrook

American Box Shook Export Association	C. D. Hudson and W. A. Clayton
--	-----------------------------------

The meeting was called to order by President J. Walter Rodgers.

Minutes of the meetings of February 12, 1941 and June 2, 1941 were read and approved.

The general financial report of the Association was given by C. D. Hudson, general manager. He stated that the taxable income at the end of the fiscal year 1941 amounted to \$13,317.66. It was also reported that a sufficient reserve had been set up on the books to take care of pending claims.

A report on shipments for the fiscal year ending May 31, 1941, showed shipments by the various members as follows:

	Footage	Percentage
American Box Corporation	3,608,530	23.52
Brewer Pine Box Company	984,342	6.42
Calif. Pine Box Distributors	1,408,218	9.18
Dwight Lumber & Box Company	570,600	3.72
Ewauna Box Company	429,353	2.80
Western Box Distributors	2,154,334	14.04
Western Pine Mfg. Co. Ltd.	1,979,359	12.90
Weyerhaeuser Sales Company
Kesterson Lumber Corp.	240,055	1.56
White Pine Sash Company	1,144,985	7.47
E. H. Barnes	996,670	6.99
New England Box Co.	1,601,746	11.40
Total	15,118,192	100%

(Testimony of C. D. Hudson.)

Mr. Hudson reported on prospects for sales to the United Kingdom and to South Africa.

Attention was called to a recent revision in the Neutrality Act of 1939, regarding the execution of Title Oaths, which necessitates a revision in the resolution as adopted by the directors of the Association June 7, 1940.

On motion, duly seconded, the following revised resolution was unanimously adopted:

Resolved, that William A. Clayton, assistant secretary of this corporation be, and he is hereby authorized in the name of, and on behalf of, this corporation to appoint an agent or agents to sign and verify, by oath or affirmation, statements, shipper's export declarations and other documents including affidavits required for compliance with section 2, sub-section C, of the Neutrality Act of 1939 relative to goods, wares and merchandise exported from San Francisco, California, or from any other port or ports of the continental United States, with full power and authority in such agent, or agents, to do everything whatsoever requisite or necessary to be done in said matters; said William A. Clayton is further authorized to evidence the authority of such agent or agents by powers of attorney executed by him in the name of this corporation and over the corporate seal, such powers of attorney to be in such form as from time to time may be required.

(Testimony of C. D. Hudson.)

The stockholders then elected the following directors for the ensuing year:

American Box Corporation—Albert Pearlman.

E. H. Barnes Company—E. J. Manning.

Brewer Pine Box Company—Oscar Z. Brewer.

Calif. Pine Box Distributors—J. F. O'Brien.

Dwight Lbr. & Box Company—Ward A. Dwight.

Kesterson Lbr. Corporation—I. E. Kesterson.

New England Box Company—Nathan Tufts.

Western Box Distributors—J. Walter Rodgers.

Western Pine Mfg. Co., Ltd.—Grant Dixon.

White Pine Sash Company—H. G. Klopp.

Weyerhaeuser Sales Company—Thos. McCulloch.

On motion by Mr. Hornibrook, seconded by Mr. Dwight, the following resolution was unanimously adopted:

Resolved, that the acts of Directors as such of the American Box Shook Export Association during the fiscal year ending June 1, 1941, be hereby confirmed, ratified and approved.

Meeting was adjourned at 3:00 p.m.

W. A. CLAYTON,

Assistant Secretary

By Mr. Wallace:

Q. Mr. Hudson, you referred during your cross-examination to a California license. I assume by that you meant the articles of incorporation? [76]

A. That's right.

Mr. Wallace: That is all.

Mr. Murray: That is all.

The Court: You are excused.

(Witness excused.)

Mr. Wallace: Mr. J. F. O'Brien.

Whereupon,

J. F. O'BRIEN

called as a witness for and on behalf of the Petitioner, having been first duly sworn, was examined and testified as follows:

Direct Examination

The Clerk: May we have your name, please?

The Witness: J. F. O'Brien.

The Clerk: J. F. O'Brien, thank you.

By Mr. Wallace:

Q. Where is your residence, Mr. O'Brien?

A. San Francisco.

Q. And what is your business?

A. General Manager of the California Pine Box Distributors.

Q. Is the California Pine Box Distributors a manufacturing or a sales organization?

A. It is a co-operative selling organization.

Q. And what products does it sell? [77]

A. Box shook.

Q. Is that organization a member of the American Box Shook Export Association?

A. Yes, sir.

(Testimony of J. F. O'Brien.)

Q. When did it become a member?

A. 1939.

Q. Do you recall what part of 1939?

A. Along in the fall.

Q. And were you then the Manager of the California Pine Box Distributors?

A. At that time I was the secretary and treasurer. I became Manager the first of 1940, February 1st of 1940.

Q. How did California Pine Box Distributors come to be a member of this Association?

A. Well, we became interested in some export business, and we knew that an export Association was functioning. Mr. Hudson had been for years secretary-manager of the National Wooden Box Association, and our mills belonged to his trade Association and we knew that he had developed an export association in conjunction with some of the other members of the Wooden Box Association, and we just wanted in. We either wanted to get in that one, or else form another one, because we wanted some export business.

Q. Who did you discuss that with?

A. With Mr. Hudson. [78]

Q. Were you, after your California Pine Box Distributors became a member of the American Box Shook Export Association, did you become a director of American Box Shook? A. Yes.

Q. Have you remained such. A. Yes, sir?

Q. Were you not the first secretary and treasurer of the incorporated American Box Shook Export Association? A. Yes, sir.

(Testimony of J. F. O'Brien.)

Q. You were secretary and treasurer, I believe, during the period of 1940 to 1941?

A. I believe so.

Q. Did your Association, the California Pine Box Distributors, make any contracts of sale with American Box Shook Export Association during the year from June 1, 1940 to May 31, 1941?

A. We made verbal commitments to them, to the Association, yes.

Q. Well, what were those commitments? What do you mean by "verbal commitments"?

Mr. Murray: Object to that as being incompetent, irrelevant and immaterial in this case, what verbal commitments were made to this corporation between the stockholders and the corporation.

The Court: Objection overruled. [79]

Mr. Murray: May I have an exception, please?

A. Well, Mr. Hudson would come out from the East and tell us that he thinks he can sell so much of a certain commodity, we will say for illustration, orange boxes for shipment within a certain date and a certain period, and "How many cars could you furnish, or do you want to furnish," or "Do you want any?" He would ask each of the individual mills, and we would check with our various mills—we represented ten different mills—to determine how much we could take of a particular orange contract that he had a chance to sell. After we found that we could furnish a certain quantity, we would make a commitment to Mr. Hudson, and naturally inquire from him the price we expected

(Testimony of J. F. O'Brien.)

to get, and he would tell us what he thought he could guarantee us as a minimum, and if we were satisfied we made a commitment to furnish.

Q. How then did you bill or invoice?

A. We invoiced at the price we discussed when we made the commitment, when Mr. Hudson came out and we made a commitment of a certain quantity at a certain minimum price, and that was the price that we invoiced at.

Q. You referred to another minimum price. Was there any other price?

A. Not unless we had a profit.

Q. Now unless who had a profit?

A. Unless he secured additional realization. [80]

Q. And then what happened?

A. We expected to get it.

Q. Well, if he did make additional realization, then what happened?

A. If he did not make one?

Q. If he did make one, then what happened?

A. Then we would get it.

Q. Did you bill for it or not?

A. In some cases we billed for it. In other words, at the end of the year, when we closed our own books and we wanted to determine whether we had any money coming, why, we invoiced the Association after action by our board, that they were going to pay so much.

Q. Let me get the parties straightened out. You say "we" and "our board." I want to get the dis-

(Testimony of J. F. O'Brien.)

inction between "California Pine Box Distributors," whom you represented, and "American Box Shook Export Association," of which you were a director and the secretary and treasurer. We are talking about contracts of sale between your California Pine Box Distributors and American Box Shook Export Association.

What did California Pine Box Distributors do with respect of these minimum billings?

A. Well, we invoiced the American Box Shook Export Association at the minimum price, and that is all we did until later, if I would attend a meeting of the Export Association [81] and as a director of the Association learn that it was contemplated paying another dollar per thousand to certain shipments, then I would go back to our office and set up a debit against the Association.

Q. By "our office" you mean California Pine Box Distributors?

A. California Pine Box Distributors.

Q. And they would then bill for an additional amount, is that correct? A. That's correct.

Q. Mr. O'Brien, I show you one of a number of checks, all of which have been introduced here as Petitioner's Exhibit 2, and ask you if among those checks was one paid to your Association?

A. Yes, sir.

Q. What was the amount? A. \$704.11.

Q. Do you know how that amount was calculated?

(Testimony of J. F. O'Brien.)

A. Yes, it was calculated on the basis of footage first.

Q. I show you the minutes of an annual meeting of the stockholders of the American Box Shook Export Association, held June 9, 1941, and which had been introduced into evidence as Petitioner's Exhibit 3. I call your particular attention to the number of items at the top of the second [82] page.

Does the name of your company appear there?

A. Yes, sir.

Q. California Pine Box Distributors?

A. Yes, sir.

Q. What is the first item after—

A. Footage, 1,408,218 feet.

Q. And the next item?

A. Percentage, 9.18 per cent.

D. Do you know to what those figures and that percentage refer?

A. I assume that they mean what they say they do, but I leave it to our bookkeeper to check the figures. In other words, if I said 1,408,000, it might be 1,406,000, if there is an error, but generally we check them when we get the remittance.

Q. That is footage percentage that you sold to the American Box Shook Association in that year?

A. Yes, sir.

Q. And the percentage of the total?

A. Yes, sir. I don't believe that we had billed the Association in that particular year for it. I think we started that practice subsequently, the billings.

(Testimony of J. F. O'Brien.)

Q. You mean you don't think you billed the Association before you got that particular check? [83]

A. I wouldn't testify that we did. I would rather want to check our records.

Q. Do you know whether you got a letter similar to the letter addressed to the Western Box?

A. Yes, we have that letter.

Q. Now, Mr. O'Brien, this arrangement that you have testified to, under which your California Pine Box Distributors Association sold lumber to American Box Shook Export Association, did that preliminary billing price arrangement continue throughout this fiscal year of June 1, 1940 to May 31, 1941?

A. Yes, sir.

Q. Has it continued since? A. Yes, sir.

Q. Has there been any change?

A. We have never made a sale except with the understanding that it is preliminary, that any additional realization is ours.

Mr. Wallace: That is all.

Mr. Murray: No questions.

The Court: You are excused.

(Witness excused.)

Whereupon,

J. W. RODGERS

called as a witness for and on behalf of the Petitioner, having [84] been first duly sworn, was examined and testified as follows:

Direct Examination

The Clerk: May we have your name?

The Witness: J. W. Rodgers, R-o-d-g-e-r-s.

By Mr. Wallace:

Q. Mr. Rodgers, where is your residence?

A. In San Jose.

Q. And what is your business?

A. Lumber and box business.

Q. Are you an officer or a director of any lumber or box association or business?

A. I am president of the Western Box Distributors and vice-president of the Lassen Lumber and Box Company.

Q. What is the Western Box Distributors?

A. It is a sales agency, selling the product of five manufacturers, box manufacturers.

Q. Does that Western Box Distributors belong to the American Box Shook Export Association, is it a member?

A. Yes, we are a member.

Q. When did it become a member?

A. In 1939, either November or December. I don't have the exact date.

Q. Under what circumstances did it become a member?

(Testimony of J. W. Rodgers.)

A. As a result of the War, the export box business [85] switched from the Scandinavian countries to the United States. The Scandinavian countries were blockaded, and Mr. Hudson had made some surveys. We were all anxious to participate in the export business. It seemed more profitable and we needed additional volume. Mr. Hudson came to California and discussed the matter with us, and we became a member on his solicitation. In fact, we were delighted to do so.

Q. Did you—and by “you” I am now referring to your Association, Western Box Distributors,—ever make any sales of lumber in the export trade through the American Box Shook Export Association? A. Not lumber, we sold box shook.

Q. I beg your pardon. That is a lawyer’s mistake.

Did you ever sell any box shook?

A. Yes, we sold box shook continuously from the time of our membership.

Q. Did you have any agreements or understanding with the American Box Shook Export Association as to the terms of those sales?

A. Mr. Hudson would indicate a price that he could afford to pay us. Sometimes it was agreeable to us, and sometimes it wasn’t. He would tell us that there was a ceiling price, and any additional realization we would naturally participate in, that amount being uncertain, all depending on what his overhead was and his claims, and everything [86] connected with the Export Association.

(Testimony of J. W. Rodgers.)

Q. Did that arrangement continue through this fiscal year?

A. Well, it was our understanding from the outset that that was the arrangement.

Q. Has there been any variation in that arrangement from the time you became a member to this moment?

A. Only in the matter of realization that we got.

Q. You mean only in the matter of the amount?

A. The matter of the amount of realization that we got. The amounts varied from year to year, depending on the volume handled.

Q. And you received a realization dependent upon your prorata of the amount of business?

A. Our participation per thousand feet board measure.

Q. And that arrangement continued throughout all the period that you have been a member?

I understand, Mr. Rodger, you were the first president? A. That's right.

Q. And you continued to be such, I take it, during the first year of the corporation?

A. That's correct.

Q. What are the duties of the president? What did he do? [87]

A. Very little except to preside at meetings.

Q. Who ran the organization?

A. Mr. Hudson, the secretary—or the manager.

Mr. Wallace: I think that is all.

Mr. Murray: No questions.

The Court: You are excused.

(Witness excused.)

Mr. Wallace: Petitioner rests.

The Court: Any witnesses on behalf of the Respondent?

Mr. Murray: No further evidence, just the return which I have already placed in evidence.

The Court: You may file briefs under the rule.

The Clerk: The main brief will be due November 4th, reply briefs November 19th.

Mr. Murray: May I have thirty days for that reply brief in this case, if Your Honor please, in view of the time lost in sending it back and forward? I really believe I want to file a reply in this case, and fifteen days would hardly give me time.

The Court: Thirty days to both parties.

Mr. Wallace: Thank you, Your Honor.

The Clerk: November 4th and December 4th.

Mr. Wallace: Thank you.

(Whereupon, at 11:30 a.m. Wednesday, September 20, 1944, the hearing in the above-entitled matter was closed.) [88]

[Endorsed]: T.C.U.S. Filed Oct. 14, 1944.

[Title of Tax Court and Cause.]

PETITION FOR REVIEW

Appellant files this its Petition for Review by the United States Circuit Court of Appeals for the Ninth Circuit of the Decision of the above entitled Tax Court, rendered April 11, 1945, and for grounds of petition alleges:

I.

Appellant filed with the Collector of Internal Revenue for the First District of California its income and excess profits tax returns for the fiscal year ended May 31, 1941. That said Collector's office is within the Ninth Circuit of the United States Circuit Courts of Appeals.

II.

That the nature of the controversy is the liability of Appellant for income and excess profits taxes for the fiscal year ended May 31, 1941 in the respective amounts of \$1952.15 and \$1270.32, which amounts were assessed as deficiencies by [116] Appellee for said year, and involves the question as to whether or not, as a matter of law, Appellant, a corporation registered under the Webb Pomerene Act for the purpose of engaging in export trade only, is liable for such income and excess profits taxes where its sole business and obligation is to export lumber products for its members without profit to itself. Also whether, assuming it was liable for income and excess profits taxes, the sum of \$7,559.11, paid by appellant to its members during the fiscal year as additional realization on sales, was properly excluded from the income tax returns filed by Appellant as income of Appellant; and whether the sum of \$4,000.00 claimed as a deduction by Appellant as a reserve for anticipated and contingent claims was a proper deduction as a matter of law. Appellee denies the right of Appellant to claim such exemption and the right of appellant in any

event to make such deductions which contentions were sustained by the Tax Court of the United States in its Decision of April 11, 1944.

Respectfully submitted,

W. R. WALLACE, Jr.

Attorney for Appellant.

Service is hereby acknowledged of a copy of the foregoing this 5th day of July, 1945.

(Signed) J. P. WENCHEL,

Chief Counsel, Bureau of Internal Revenue [117]

[Endorsed]: T.C.U.S. Filed July 5, 1945.

[Title of Tax Court and Cause.]

DESIGNATION OF RECORD

To the Clerk of The Tax Court of the United States:

Appellant above named hereby designates as the portion of the record, proceedings and evidence to be contained in the record on appeal in the above matter the following, to-wit:

1. Petition of Appellant herein for redetermination of deficiency filed herein, together with exhibits thereto attached;

2. Answer of Appellee to said Petition;

3. Opinion promulgated February 12, 1945.

4. Transcript of Testimony in question and answer form taken and received before the Honorable Ernest H. Van Fossan, on September 20th,

1944, together with any and all exhibits offered and received at said hearing. [118]

Dated June 18th, 1945.

W. R. WALLACE, Jr.

Attorney for Appellant.

Service of a copy of the foregoing is hereby acknowledged this 5th day of July, 1945.

(Signed)

J. P. WENCHEL,

Chief Counsel, Bureau of Internal Revenue. [119]

[Endorsed]: T.C.U.S. Filed July 5, 1945.

[Title of Tax Court and Cause.]

CERTIFICATE

I, B. D. Gamble, clerk of The Tax Court of the United States do hereby certify that the foregoing pages, 1 to 119, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praeceptum in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 19th day of July, 1945.

(Seal)

B. D. GAMBLE,

Clerk, The Tax Court of the United States.

[Endorsed]: No. 11115. United States Circuit Court of Appeals for the Ninth Circuit. American Box Shook Export Association, a Corporation, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Upon Petition to Review a Decision of The Tax Court of the United States.

Filed August 3, 1945.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 11115

AMERICAN BOX SHOOK EXPORT
ASSOCIATION,

Appellant,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DESIGNATION OF THE RECORD

The Appellant hereby designates the entire record as certified to the United States Circuit Court of Appeals for the Ninth Circuit as the record upon which it tends to rely.

Dated: San Francisco, California, August 8, 1945.

W. R. WALLACE,
Attorney for Appellant, American Box Shook Ex-
port Association.

[Endorsed]: Filed August 10, 1945. Paul P.
O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

CONCISE STATEMENT OF THE POINTS
UPON WHICH APPELLANT INTENDS
TO RELY

I.

That an association, whether incorporated under specific statutes relating to non-profit cooperative associations, or otherwise, which does business with its members only under contracts with those members which preclude the possibility of profit to the association, is not subject to income or excess profits taxes as a matter of law.

II.

That a corporation, organized under the Webb Pomerene Act conducting no business except the sale of the products of its members in the export trade under contracts with its members which preclude the possibility of profit to the association, may properly withhold a portion of the sums realized from such sales in the export trade to cover the cost of doing such business and a reasonable reserve for contingencies and distribute all of the

balance of such realizations from such sales to its members without being liable for income or excess profits taxes, either upon such reserves or the sums so distributed to its members.

III.

That the payment by the association to its members of the sum of \$7,559.11 during the year in question was not in the nature of a dividend, but was made under the contractual relationships between the association and its members and represented the payment by the association to its members of sums which belonged, not to the association, but to the members.

WILLIAMSON & WALLACE

Attorneys for Appellant

[Endorsed]: Filed Aug. 10, 1945. Paul P. O'Brien,
Clerk.

